8473
SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA
SANTA MARIA BRANCH; COOK STREET DIVISION
DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, MAY 3, 2005

8:30 A.M.

(PAGES 8473 THROUGH 8528)

REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304
BY: Official Court Reporter 8473

APPEARANCES OF COUNSEL:

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I N D E X

Note: Mr. Sneddon is listed as “SN” on index.
Mr. Zonen is listed as “Z” on index. Mr. Auchincloss is listed as “A” on index.
Mr. Nicola is listed as “N” on index. Mr. Mesereau is listed as “M” on index.
Ms. Yu is listed as “Y” on index. Mr. Sanger is listed as “SA” on index.

PLAINTIFF’S
WITNESSES DIRECT CROSS REDIRECT RECROSS
SAUNDERS, David 8478-N 8487-SA
KLAPAKIS, Jeff
(Re-called) 8501-SN 8503-SA
BONNER, Craig (Re-called) 8509-SN 8518-SA

1 E X H I B I T S
2 FOR IN PLAINTIFF'S NO. DESCRIPTION I.D. EVID.
3 872 Linked phone calls record 8478 8480
4 873 Linked phone calls record 8479 8480
5 874 Linked phone calls record 8479 8480
6 884 Four-page compilation of
7 telephone records 8510 8512
8 885 Diagrams 8512 8512
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Santa Maria, California
Tuesday, May 3, 2005
8:30 a.m.

THE COURT: Good morning, everyone.
THE JURY: (In unison) Good morning.
COUNSEL AT COUNSEL TABLE: (In unison)
Good morning, Your Honor.
THE COURT: You may proceed.
MR. NICOLA: Thank you, Your Honor.
The People call Dave Saunders as their next
witness.
THE COURT: Come forward, please. When you
get to the witness stand, remain standing.
Face the clerk over here and raise your
right hand.

DAVID SAUNDERS
Having been sworn, testified as follows:

THE WITNESS: Yes, ma'am.
THE CLERK: Please be seated. State and
spell your name for the record.
THE WITNESS: My name is David Saunders.
S-a-u-n-d-e-r-s.
THE CLERK: Thank you.
//
// 8477

1 DIRECT EXAMINATION
2 BY MR. NICOLA:
3 Q. Good morning. Would you please tell the
4 jury how you're employed and what your position is?
5 A. Yes, I'm the chief criminal investigator for
6 the District Attorney's Office.
7 Q. How long have you held that position?
8 A. About two and a half years.
9 Q. And prior to that, did you have other law
10 enforcement experience?
11 A. Yes. I've been a peace officer about -- for
12 about 19 years.
13 Q. Turning your attention to this case, were
14 you asked to assist Sergeant Bonner and Detective
15 Zelis in the analysis of certain phone records
16 contained in telephone binders to my left and in
17 front of you?
18 A. Yes.
19 Q. Were you assigned the dates of March 2nd,
20 3rd and 4th of 2003?
21 A. Yes.
22 Q. If you could turn your attention to Exhibit
23 872, please.
24 A. Okay.
25 Q. Do you recognize that exhibit?
26 A. Yes.
27 Q. And could you tell the jury what that
28 exhibit is? 8478

A. Yeah, this is a diagram showing the relevant telephone calls involved in this matter on March 2nd, 2003.
Q. And if you can flip to Exhibit 873.
A. Yes.
Q. Is that the diagram for March 3rd of 2003?
A. Yes.
Q. And Exhibit 874, please.
A. Yes. That's the diagram for the 4th.
Q. Now, behind each of the diagrams marked 872, 873 and 874, are there spreadsheets which contain the actual phone calls?
A. Yes, there are.
Q. Okay. And are those accurate?
A. Yes.
Q. Did you physically connect the phone calls that are listed on that chart to the evidence in the telephone binders that we've previously discussed?
A. Yes, for -- on the spreadsheet for each row, each one, I manually checked and compared it to the exhibit to confirm the accuracy.
Q. Okay. And do Exhibits 872, 873 and 874 accurately reflect the analysis that you conducted?
A. Yes.
MR. NICOLA: Your Honor, at this time we'd offer those three exhibits into evidence.
MR. SANGER: No further objection. We have the objection to tying these up, but other than 8479

1 that --
2 THE COURT: All right. They're admitted.
3 Q. BY MR. NICOLA: If you could turn to the
4 chart for Exhibit 872, please.
5 And, Your Honor, if I may have "Input 4" on
6 the Elmo.
7 Is that the diagram chart for Sunday,
8 March 2nd of 2003?
9 A. Yes.
10 Q. If you could please start in the upper
11 left-hand corner and tell us when the call between
12 the Frank Cascio phone and the Evvy Tavasci home
13 phone occurred.
14 MR. SANGER: Your Honor, I'm going to object
15 and also move under 352; the objection being the
16 documents speak for themselves. There's been
17 inadequate foundation, and 352, undue consumption of
18 time going through each call.
19 THE COURT: All right. That's overruled.
20 Go ahead.
21 THE WITNESS: The call between Mr. Cascio and
22 Ms. Tavasci occurred at 6:04 p.m., and lasted two
23 minutes or less.
24 Q. BY MR. NICOLA: Okay. And generally can you
25 give us a time frame between the Cascio phone and
26 the icon marked "Evelyn Tavasci/MJJ Productions"?
27 A. Yes, the calls occurred between 6:03 p.m.
28 and 6:15 p.m. 8480

Q. Okay. And if you could direct your attention to the bottom middle icon, the one that's marked "Paul Hugo." And I've placed in front of you Exhibit 453. If you could open that up, please. Are the telephone records for that Paul Hugo phone contained within Exhibit 453 at Tab No. 3?
A. Yes, sir.
Q. Do the records indicate where the calls from the Paul Hugo phone originated on March 2nd of 2003?
A. Yes, Brazil.
Q. And can you tell us which page you're looking at in that exhibit?
A. Yes, sir, it's page 8 of 12. As well as page 9 of 12.
Q. I'm going to put page 9 of 12 up on the screen briefly. I've highlighted a line in there. Based on your review of the records, what can you tell us about the call that is highlighted up on the Elmo?
A. Mr. Hugo checked his voice mail at 10:32 a.m., Brazil time, and he was in Brazil when he did so.
Q. And Brazil is five hours ahead of the Pacific Coast?
A. Yes.
Q. So that's 5:32 a.m., California time, correct?
A. That's right. 8481

Q. Is that the first call that you see in the Paul Hugo records?
A. Yes, sir.
Q. Coming from Brazil?
A. Yes.
Q. Now, with respect to the calls - I'll put it back up - between the Paul Hugo phone and the Vincent Amen phone, what time was the first call placed from Brazil to the Vincent Amen phone?
A. 6:05 p.m., Brazil time.
Q. Okay. How long did that call last?
A. Three minutes or less.
Q. Immediately after that call to the Vincent Amen phone from the Paul Hugo phone, was there a call from the Frank Cascio phone to the Vince Amen phone?
A. Yes.
Q. How long was that call?
A. One minute or less.
Q. And immediately after the call between the Frank Cascio phone to the Vince Amen phone, was there also a call that's not on this chart from the Frank Cascio phone to the Paul Hugo phone?
A. Yes.
Q. Okay. I'm going to put that on the chart. I believe this is page eight of the Paul Hugo phone records; is that correct?
A. Yes, sir. 8482

Q. And were you able to confirm which of these calls was the call between the Frank Cascio phone to the Paul Hugo phone?
A. Yes, it's the one item, number three.
Q. And that call lasted for eight minutes?
A. That's right.
Q. The additional calls on this record, specifically Call 4 and Call 9, do you recognize the phone numbers associated with those calls being dialed out from Brazil?
A. Yes. That's Vincent Amen's.
Q. Okay. And with respect to Call No. 7 and 8, do you recognize those phone numbers? Are they on your chart for Marc Schaffel?
A. Yes. Thank you. Yes.
Q. Now, before we finish with the Paul Hugo phone record, I'd like to show you page 11 of 12. Just briefly, is that page 11 of 12?
A. Yes, sir.
Q. Okay. I'm not going to project it, but while you're testifying, can you tell us whether that call item contained within the Paul Hugo phone records was the last call that you see from Brazil?
A. It was.
Q. And without telling us the actual phone number, do you know from your review of the records where that call was placed to?
A. The defendant's home. 8483

Q. Neverland Valley Ranch?
A. Yes, sir.
Q. And that call lasted for how long?
A. Two minutes or less.
Q. Okay. If we could turn to Exhibit 873, please.
And if I may use the Elmo again, Your Honor.
Is that the chart for Monday, March 3rd of 2003?
A. Yes.
Q. And at the right-hand corner of the chart, if you would focus on the calls labeled “Vincent Amen” and “Neverland Valley Ranch,” if you could give us the time range that those calls occurred between those two phones.
A. The first call was at 3:17 p.m. and the last call was at 6:49 p.m.
Q. And the same question with respect to the calls between the Frank Cascio phone and the Neverland Valley Ranch phone.
A. The first call was at 1:34 p.m., the last call was at 8:28 p.m.
Q. The calls between Neverland Valley Ranch and the marker marked “Evelyn Tavasci/MJJ Production,” was that call -- excuse me, was the phone number for the Evelyn Tavasci line that you have up there 402-7087, Area Code (818)?
A. Yes. 8484

Q. Were all the calls in that link to that particular phone?
A. Yes.
Q. If we could turn, please, to the next exhibit, 874. If we could start with the Paul Hugo telephone line, I'd ask you whether the calls between the Paul Hugo line and the Vince Amen line were in one direction or whether the calls were going both ways.
A. They were in one direction.
Q. And which direction was that?
A. Mr. Hugo was calling Mr. Amen.
Q. And are the calls being placed from the Paul Hugo phone in Brazil?
A. Yes, sir.
Q. The next link would be from Paul Hugo phone to Marc Schaffel phone. Were those also all initiated by the Paul Hugo phone?
A. Yes.
Q. Can you tell us what time the first call between the Hugo phone and the Amen phone first came in?
A. Yes.
Q. Please do so.
A. 1 a.m., Brazil time.
Q. Okay. And with respect to the calls between Paul Hugo phone and Marc Schaffel phone, can you tell us what time that first call came in? 8485

A. 1:12 p.m., Brazil time.
Q. Did the calls between the Vince Amen phone and the Neverland Valley Ranch phone go both directions or one direction?
A. One direction.
Q. Was there a call placed from the Vince Amen phone to Neverland Valley Ranch at 1307 p.m.?
A. Yes.
Q. And did that follow a call -- excuse me. Was that the first call to Neverland Valley Ranch by Vince Amen's phone?
A. Yes.
Q. And the other two calls were at 4:14 and 2:34 p.m.?
A. Yes, sir.
Q. If you could turn your attention to the Frank Cascio phone.
A. Okay.
Q. Were all the phone calls from the Frank Cascio phone inbound to Neverland Valley Ranch?
A. Yes.
Q. And what time was the first call?
A. 9:05 a.m.
Q. And how long did that call last?
A. Seven minutes or less.
MR. NICOLA: Thank you, Chief Investigator. I have no more questions.
MR. SANGER: May I proceed? 8486

1 THE COURT: Yes.
2
3 CROSS-EXAMINATION
4 BY MR. SANGER:
5 Q. Investigator Saunders, how are you?
6 A. Fine, thank you.
7 MR. SANGER: Why don't you leave those
8 there, please. Those are the originals?
9 MR. NICOLA: These are my copies.
10 MR. SANGER: Oh, the originals are up there.
11 Sorry.
12 Excuse me, Your Honor, I'm sorry.
13 Q. All right. I'm going to ask you to clarify
14 one thing, first of all. And we're going to put
15 these exhibits up quickly. You said, your testimony
16 was, that a call was placed by Paul Hugo to the
17 defendant's home. Do you remember saying that?
18 A. Yes.
19 Q. Okay. You were out there at the search on
20 November 18th, 2003, were you not, sir?
21 A. That's correct.
22 Q. And you're aware that what you refer to as
23 the defendant's home is, in fact, 2700 acres; is
24 that correct?
25 A. Yes.
26 Q. And you're aware that not only is there a
27 large home, but there are a number of outbuildings;
28 is that correct? 8487

A. That's right.
Q. And there is approximately 100 people who are employed at that ranch; is that correct?
A. I don't know if there are 100 people employed.
Q. How many -- what's your best estimate, having been out there?
A. You know, I -- that's beyond the scope of my knowledge. I really don't know how many employees he has.
Q. Let's just put it this way: You know that there are dozens and dozens of people who work out there; how about that?
A. That's a fair assessment.
Q. All right. And do you know how many telephone extensions there are out there?
A. I know there are multiple telephone extensions. I don't know the exact number off the top of my head.
Q. Now, when you did the phone analysis, you evaluated how many telephone numbers, in other words, distinct telephone numbers for Neverland Valley Ranch?
A. For the three dates in question I'd have to go back and look at each date to add them up, but there were multiple numbers.
Q. Okay. Are there at least eight distinct telephone numbers? 8488

A. No, I don’t think there are that many.
Q. During the period you looked at, you looked at about four of them; is that right?
A. That sounds more accurate, yes.
Q. Were you aware that there were more than the four numbers that you looked at?
A. Yes.
Q. And then in addition to telephone numbers, I’d asked you about extensions. In other words, physical telephones located different places. And you don’t know how many physical telephones are located in different places on the ranch, do you?
A. I’m sorry, can you rephrase that question?
Q. Well, when I said “extensions,” I wanted to clarify we’re talking about -- there’s phone numbers and then there are actual telephones. You can have more telephones than extensions, I take it?
A. Sure. Sure.
Q. And so do you know how many actual telephone extensions there were throughout that ranch?
A. No.
Q. Would you say dozens?
A. I -- I’m not qualified to comment on how many there are.
Q. Well, you were -- you were out there during the search, and you looked around, right?
A. No. I didn’t look around. I was at the command post. 8489

Q. Were you in the house?
A. No, I was at the command post.
Q. I'm sorry?
A. I was at the command post.
Q. You were out on the front porch of the house for a while?
A. Right.
Q. You're in the photographs of the search, right?
A. I haven't seen my photographs.
Q. Okay. And then where did you go to? Where is the command post?
A. It was parked in front of the residence.
Q. Okay. So you were outside -- the command post was the big van, or the big motorhome?
A. Motorhome-looking thing.
Q. You didn't stay inside the whole time on November 18th, 2003, did you?
A. Inside the mobile home?
Q. Right.
A. No, sir.
Q. All right. And it's your testimony you did not go into any of the buildings, any of the structures anywhere?
MR. NICOLA: Objection, Your Honor, this is beyond the scope.
THE COURT: Overruled.
THE WITNESS: At one point, I went in to get 8490

some of my personnel to check on them, and that was a fairly isolated incident.
Q. BY MR. SANGER: All right. In any event, your understanding is that there was certainly several telephone extensions on that ranch, let us say that.
A. Yes.
Q. And do you know who was at the ranch, which employees were at the ranch, on March the 2nd, 2003?
A. Personal knowledge or what the investigation has indicated?
Q. Well, start with personal knowledge.
A. No.
Q. You know there were employees there, correct?
A. Yes.
Q. All right. And you were there at the search as a representative of the District Attorney's Office, correct?
A. Yes, sir.
Q. Mr. Sneddon himself was there during part of the search, correct?
MR. NICOLA: Objection, relevance, Your Honor.
THE COURT: Sustained.
Q. BY MR. SANGER: All right. In any event, you saw other district attorney's employees besides yourself there at the search, correct? 8491

MR. NICOLA: Objection, relevance, Your Honor.
THE COURT: Sustained.
Q. BY MR. SANGER: So when you said Paul Hugo -- the phone call went to the defendant's home --
A. Uh-huh.
Q. -- you have no idea who made the call, first of all, Paul Hugo's phone, right? You have no idea who placed the call from his phone, correct?
A. I'd say it's a reasonable inference that he did. I wasn't there and didn't witness it.
MR. SANGER: Move to strike based on speculation.
THE COURT: It's a question you asked, Counsel. I'm not going to restrict him.
MR. SANGER: It's not responsive if it's --
THE COURT: That's responsive. You have no idea. Well, he has an idea.
MR. SANGER: All right. Very well, Your Honor.
Q. Beyond the fact that if somebody's phone is in their name, you could speculate that they may have been the person using it. Beyond that, from these records, can you determine who placed the call from Paul Hugo's phone?
A. No.
Q. Now, more importantly, with regard to the 8492

Neverland Valley Ranch, can you determine from the phone records who answered the phone, if anybody, at Neverland Valley Ranch when the call was made?
A. From the phone records?
Q. Right.
A. No.
Q. All right. And can you tell us from the phone records -- let me withdraw that.
I asked you about the employees at the ranch on March the 2nd, 2003. And I think, if I'm not mistaken, you said that there were employees -- your understanding was that there were employees there, you just don't know who; is that right?
A. Yes, sir.
Q. All right. Now, were there other people there, guests, or people associated with business or music, or some other connection, were there other people at the ranch besides employees on March the 2nd, 2003; do you know?
A. There were many people there. I don't know what their role was specifically. There were employees. There were some young boys, and there were some other people but --
Q. On March the 2nd, 2003?
A. We're talking about the day of the search warrant?
Q. No. We're talking about March the 2nd, 2003. 8493

A. Oh, I'm sorry.
Q. You testified to March the 2nd.
A. Yes, sir. I see. You're right. I'm sorry.
I don't know who was there.
Q. All right. Now, when did you prepare 872,
the chart that was put up on the board?
In fact, Your Honor, while asking that
question, I'd like to approach and retrieve that
exhibit, if I may put it up.
THE COURT: You may.
MR. SANGER: Thank you.
THE WITNESS: That was finalized yesterday
morning.
Q. BY MR. SANGER: All right. You can leave it
in the book for a moment.
Mr. Nicola has given me his copy of this,
which purports to be the same thing. May I put that
up?
THE COURT: You may.
MR. SANGER: It's 872.
Q. All right. Now, you had just indicated this
was finalized yesterday morning, this particular
summary chart.
A. Yes, sir.
Q. Which is 872, for the record.
And on that chart, you do not record some of
these telephone calls that you referred to, is that
correct, in your testimony? 8494

A. Yes, there was a call between -- an outgoing call from Mr. Cascio --
Q. Okay. I didn't ask you about -- to detail them. Because there were several, were there not? You referred to a call from Cascio, a call from Hugo to Neverland Valley Ranch, at least two of them; is that correct?
MR. NICOLA: I'd object. It misstates the evidence with respect to Neverland Valley Ranch.
THE COURT: The objection is overruled.
You may answer.
THE WITNESS: That's not what I recall.
That call between Hugo and Neverland Valley was when Hugo was leaving Brazil, and I believe that was a later date than the second.
Q. BY MR. SANGER: What date was that?
A. Let me look back into the records and --
Q. Well, that's all right. It's in the records.
MR. NICOLA: Your Honor, I'd request the witness be allowed to answer that question.
MR. SANGER: He asked permission to go through the records and --
THE WITNESS: I have it now.
MR. SANGER: If he has it, then we'll ask.
THE COURT: All right.
Q. BY MR. SANGER: What date was it?
A. March 8th. 8495

Q. March 8th, okay. So that would not have anything to do with the March 2nd call, the March 2nd chart for 872, correct?
A. Correct.
Q. All right. Now, there's one page attached to 872, the first page of which we have on the board, right? You have one page --
A. There's one page, yes, sir.
Q. And it's not a full page, correct? All right. It looks like you have more on your page than I do on mine.
May I approach, Your Honor?
THE COURT: Yes.
Q. BY MR. SANGER: On page two of 872 that you have that's been admitted into evidence, you have a number of calls from Mr. Hugo which are added on to the analysis; is that correct?
A. They're included in the analysis, yes, sir.
Q. When were they added on?
A. I don't have an independent recollection when they were added on. I know I was working on this through the weekend confirming that everything was completely accurate. And I believe they were there at that time.
Q. All right. Now, as far as Mr. Hugo is concerned, in the course of your investigation in this case, you were aware that Mr. Hugo and -- Mr. Hugo was a production associate of Marc Schaffel, 8496

correct?
MR. NICOLA: Objection. Lack of foundation;
calls for hearsay.
THE COURT: Overruled.
You may answer.
THE WITNESS: Would you please repeat the
question?
MR. SANGER: Ask, Your Honor, if it may be
read back.
THE COURT: Yes.
(Record read.)
THE WITNESS: No.
Q. BY MR. SANGER: Were you aware that Mr. Hugo
had worked with Marc Schaffel in any capacity?
MR. NICOLA: Objection, lack of foundation,
Your Honor.
THE COURT: Overruled.
You may answer.
THE WITNESS: Yes, generally.
Q. BY MR. SANGER: All right. And you were
aware that at this time Marc Schaffel had traveled
commercially to Brazil; is that correct?
A. No.
MR. SANGER: Okay. All right. With the
Court's permission, I'll put up --
MR. AUCHINCLOSS: My apologies.
(Laughter.)
THE COURT: I think you -- 8497

MR. SANGER: Are we to go to our corners now?
THE COURT: You said the magic word.
(Laughter.)
MR. SANGER: Sorry, I stole the Court's line.
THE COURT: You did.
MR. SANGER: Yours was probably funnier, I'll acknowledge that.
I would like to put 873 up, if I may. Is that all right, Your Honor?
THE COURT: Yes. Of course.
Q. BY MR. SANGER: And I'm using the copy just provided to me by the District Attorney, so if you'd be kind enough to take a look at your 873 and make sure that we are literally and figuratively on the same page here.
A. Yes, sir.
Q. Okay. I don't want to spend unnecessary time on this, but you notice in your analysis of the phone records here that there are several telephone numbers that were associated with Evelyn Tavasci?
A. Yes.
Q. In other words, there is the one you've labeled "MJJ Production," there's one "Evelyn/MJJ Prod, Unit 1," there's one "Evelyn Tavasci home," and there's one "Evelyn Tavasci/MJJ Production" at the bottom. Do you see that on the chart? 8498

Do we have our --
A. Yes.
MR. SANGER: Do we have our pointer, please?
MS. YU: Oh.
MR. SANGER: Thank you.
Q. There's a technical term for this. "The pointer thing."
There we go. Just so we're clear - I think everybody is, but just in case - we have this one that says, "MJJ Production"?
A. Right.
Q. And this one says, "MJJ Production" also. But those are, in fact, two different phone numbers; is that correct?
A. Yes.
Q. The first -- the first one at the top is -- ends in 9239, correct?
A. Let me double-check that. That's correct.
Q. And this one ends in 8984, correct?
A. Yes.
Q. And then there's another one over here that says, "Tavasci," comma, "Evelyn/MJJ Production," and that's yet another phone which, in fact, is a different Area Code and ends in 7087, correct?
A. Yes.
Q. All of these phones that we referred to that say "Tavasci" and have some designation after them, 8499

sometimes the same, all of these five phones are different phone numbers, right?
A. That's right.
Q. And they're either (310) or (818), which is the Los Angeles area; is that correct?
A. Yes.
Q. And then you have this other phone down here, "MJJ Production/Miko Brando," which is yet a different number; is that right?
A. That's right.
Q. Now, in essence, you have somebody at -- in various places here -- without going into excessive detail, you've got somebody on one Evelyn Tavasci phone calling somebody else on another Evelyn Tavasci phone, correct?
A. Right.
Q. Now, you speculated before, so I'll let you do it again, if it's all right. Do you therefore assume it's not Evelyn Tavasci calling herself on the various phones?
A. That's a good point. Thanks for giving me a little latitude here. I think that example down at the bottom, the seven calls going to Neverland, for example, I know that's Chris Carter calling the ranch, and based on --
Q. I didn't ask you if it was Chris Carter calling the ranch. I asked you about these. I didn't say say anything you want. I was asking 8500

about these calls. You assume that it is not Evelyn Tavasci calling Evelyn Tavasci; that in fact there are other people calling --
A. Right.
Q. -- on those phones?
A. Right.
MR. SANGER: All right. Okay. All right.
And I have no further questions.
MR. NICOLA: No questions.
THE COURT: All right. Thank you. You may step down.
Call your next witness.
MR. SNEDDON: Lieutenant Klapakis, Your Honor.
THE COURT: You may be seated. You're still under oath.

JEFF KLAPAKIS
Having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION
BY MR. SNEDDON:
Q. Good morning.
A. Good morning.
Q. Are you familiar with the telephone number Area Code (310) 490-0144? 8501

A. Yes, I am.
Q. And did you make a telephone call to that particular phone number?
A. Yes, I did.
Q. When did you do that?
A. Yesterday morning.
Q. And when you made that telephone call -- let me go back for just a second. During the course of this investigation, have you had an occasion to contact a private investigator by the name of Brad Miller?
A. Yes, I have.
Q. Do you remember when the first time you contacted Mr. Miller was?
A. It was 2004.
Q. And you had a conversation with him at that time?
A. Yes, I believe we did.
Q. Was it a personal call or was it a telephone call?
A. It was a personal call. We were trying to locate him to deliver some paperwork and stuff like that, so --
Q. And were you able to make contact with him?
A. Yes.
Q. Now, with regard to the telephone number that you called, it's Area Code (310) 490-0144, you called that number yesterday? 8502

A. Yes, I did.
Q. And did you talk to somebody on the other line?
A. Yes, I did.
Q. Who was that?
A. Brad Miller.
Q. Did you have a conversation with Mr. Miller, without going into the details of what was said?
A. Yes, I did.
Q. Were you satisfied that the person on the other end of that line was Mr. Miller?
A. Yes, I am.
Q. Based on both the first conversation earlier in 2004 and the content of the conversation yesterday?
A. Yes.
MR. SNEDDON: Nothing further, Your Honor.
THE COURT: Any questions?
MR. SANGER: I'm sorry?
MR. SNEDDON: Nothing further.
MR. SANGER: Okay.

CROSS-EXAMINATION
BY MR. SANGER:
Q. Lieutenant Klapakis, how are you doing?
A. Fine, sir.
Q. You've been on this case since June or July of 2003, correct? 8503

A. Actually, I believe it was prior to that.
February of 2003.
Q. You've been on this case since February of
2003?
A. Yes.
Q. And you were aware of Brad Miller's
existence in this case since what time?
A. Prior to November 2003.
Q. And you say that because, among other
things, you all got a search warrant for Brad
Miller's office before November 18, 2003, correct?
A. We obtained a search warrant before November
18th, yes, we did.
Q. And you were aware that Brad Miller was a
private investigator before November 18, 2003,
correct?
A. Yes.
Q. In part, Mr. Sneddon himself went to Brad
Miller's office before November 18, 2003, to
investigate and take photographs, correct?
A. Mr. Sneddon's been by there, yes, that's
correct.
Q. Did he go down to investigate and take
photographs?
A. He went down to take photographs of the
office, yes.
Q. And he looked in the phone book to see if he
had the correct address for Mr. Miller, correct? 8504

A. You know, I'm not sure if he looked in the phone book, sir.
Q. He wrote a report, right?
A. Do you have the report? It would refresh my memory.
Q. Somewhere.
A. All right.
Q. It's a fair question, but I don't have it right in front of me. In any event -- and Mr. Sneddon actually went down and showed photographs of Brad Miller to Janet Arvizo before the November 18, 2003, search, correct?
A. I believe that's correct.
Q. And then you had officers search Mr. Miller's office in Beverly Hills on November 18, 2003, correct?
A. That's correct.
Q. And they went through, to a certain extent, his papers, records, and files within the scope of the search warrant, correct?
MR. SNEDDON: Your Honor, I'm going to object as immaterial and irrelevant. Beyond the scope.
THE COURT: Sustained.
MR. SANGER: All right.
Q. It's your testimony that the first time you figured out Brad Miller's phone number was yesterday? 8505

MR. SNEDDON: Object as argumentative.
THE COURT: Overruled.
You may answer.
THE WITNESS: No. We believed it was -- from other sources, we believed it to be Brad Miller's phone.
Q. BY MR. SANGER: When did you first believe it was Brad Miller's phone?
A. I believe that we were aware it was Mr. -- a phone that was linked to Mr. Miller through other documents we had found through the various search warrants that we had found from Mr. Schaffel's residence, I believe.
Q. And so if today is May the 3rd -- which I think it is. I was just verifying that. Is that correct?
A. Yes.
Q. All right. Time flies. May the 2nd, 2005, is the first time that you actually attempted to verify that this phone number belonged to Brad Miller; is that correct?
A. That's incorrect.
Q. When did you try to verify it before?
A. Well, one of my detectives has written several search warrants to various phone companies involved in this investigation. What we -- as you heard, there's thousands of numbers. We've -- we were able to determine a couple of days ago that the 8506

phone number that we believed showed linked to Brad Miller was actually linked to a subsidiary cellular phone company that fell through -- fell through the cracks when we were putting everything together.
Q. All right. But in order to determine whose phone it is, you concluded that you can call it and find out who answers it, right?
A. That's exactly what I did.
Q. And you concluded that yesterday and did that yesterday, correct?
A. That's what I did yesterday, yes, sir.
Q. All right. Now, there's no question, based on your investigation at this point, that Brad Miller was a licensed private investigator, correct?
A. I'm sorry, say that again.
Q. Based on your investigation -- you're in charge -- back to the foundation. You're in charge of the investigation; is that correct?
A. Yes, I am.
Q. And as a part of that, your responsibility is to have a working knowledge of the investigation that's conducted by officers under you; is that correct?
A. I have some knowledge of the investigation, yes.
Q. And you are aware that Brad Miller is a licensed private investigator, correct?
A. I'm aware of that. 8507

Q. And you were aware long before today that
Brad Miller was, in fact, working for Mark Geragos,
correct?
A. I'm aware of that.
Q. Okay. And you've been aware of that for
some time?
A. Yes, I have.
Q. And you would have expected that Mark
Geragos and Brad Miller would have been in
communication based on the fact that he's a lawyer
and this was a private investigator working for him,
correct?
A. Yes.
Q. Okay. So you called yesterday?
A. Yes.
MR. SANGER: Okay. No further questions.
MR. SNEDDON: Nothing further.
THE COURT: You may step down.
Call your next witness.
MR. SNEDDON: Craig Bonner.
MR. SANGER: Do you have an exhibit number
for this?
MR. SNEDDON: I'm trying to find out when I
have the evidence.
MR. SANGER: Yes.
(Off-the-record discussion held at counsel
table.)
// 8508

CRAIG BONNER
Having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION
BY MR. SNEDDON:
Q. Detective Bonner, one of the assignments that you were given in this case and which you spent considerable time on the witness stand the last couple of days just testifying to phone records, correct?
A. That's correct.
Q. And in the -- in the procurement of those records, did you obtain a search warrant for the telephone records of Brad Miller?
A. For the number that I associated with Brad Miller, yes.
Q. Okay. And how many telephone companies was that request sent to?
A. Every single one, by name and his personal information.
Q. Every single one doing business in California?
A. Correction -- or, I'm sorry, correct. Basically any phone company, ATT Wireless, all of the cell phone companies, as well as Verizon California and Pac-Bell. Anything that I thought might have a telephone registered to Mr. Miller. 8509

Q. And as a result of the search warrants that were returned, did you -- did you get any information from any of those carriers that the private investigator Brad Miller had a telephone?
A. None of the information directly came back directly to Mr. Miller.
Q. Now, with regard to the telephone number Area Code (310) 490-0144, do you recognize that number?
A. Yes.
Q. And when -- and was there a return on the search warrant associated with that number?
A. There was. It came back to a Payless reseller with an associated name -- last name of like Mozaffarian.
Q. So Mr. Miller wasn't in any way, with the paperwork you've got, connected to that number?
A. No.
Q. As a result of the information that Detective Klapakis was able to obtain about the person that he talked to at that number, were you asked to put together a list of phone calls that you reviewed from the Exhibits 452, 456 and 450 that you had previously testified?
A. Yes, I did that last night.
Q. And let me just show you the exhibit which I've shown to counsel, Your Honor, and had marked as 884 for identification purposes. 8510

THE COURT: All right.
MR. SNEDDON: It's a four-page document.
THE WITNESS: This is the materials I
prepared last night.
Q. BY MR. SNEDDON: That's a compilation of the
telephone records that are in evidence in this case
that reflect communications between that phone
number, Mr. Miller's phone, and other parties in
this case, correct?
A. That's correct.
Q. And is that particular exhibit, 884, listed
in the time in which those are -- the sequence in
which those phone calls are made?
A. Yes, it does.
Q. And the individual names that are contained
on that particular exhibit?
A. Do you want me to list the --
Q. Just the people, yes.
A. The phones that are in this exhibit come
back to Vincent Amen, Frank Cascio, Evelyn
Tavasci/MJJ Productions, and Miss -- or the Hamid
Mozaffarian phone number that we now believe or now
know comes back to Brad Miller.
Q. Now, with regard to the -- the document 884
that you put together, this is a digest or a
compilation of the information from the exhibits I
referred to, 452, 450, 456, and -- I believe those
are the ones; is that correct? 8511

A. That's correct.
MR. SNEDDON: Your Honor, at this time I move this be put into evidence.
MR. SANGER: No objection, other than the previous objection.
THE COURT: All right. They're admitted, subject to the....
MR. SNEDDON: Oh, Bob? I showed you this earlier.
Your Honor, I have another document. It's 885, and it's a 13-page document. I'm sorry, it's a 22-page document. And I've shown that to counsel and I placed a blue number in the lower right-hand corner on each of the pages, 1 through 22.
Q. All right. Detective Bonner, have you -- are you familiar with the Exhibit 885?
A. Yes, I am.
Q. And are you familiar with the pages -- or what it purports to represent of 1 through 22?
A. Yes.
Q. And these are diagrams, are they not?
A. Yes, they are.
Q. That reflect the information contained in Exhibit 884?
A. Correct.
Q. Between the parties?
A. Correct.
MR. SNEDDON: I'd move that 885 be placed 8512

into evidence, Your Honor.
MR. SANGER: No objection.
THE COURT: It's admitted.
MR. ZONEN: Excuse me.
Q. BY MR. SNEDDON: Now, with regard to the information that's contained in the Exhibit 884- okay? - the source of that information is from exhibits that are in this case, correct?
A. Correct.
Q. And there are no exhibits in this case that show phone calls that are -- let me rephrase that. Did you determine whether Mr. Cascio's phone was a cellular or a landline?
A. It's a cellular.
Q. And Mr. Amen's?
A. Again, a cellular phone.
Q. And the Tavasci phone?
A. It's a cellular phone.
Q. So these are cellular phones?
A. Correct.
Q. And the phone calls that are on this particular document are all cellular contacts; is that correct?
A. Correct.
Q. So these would be calls that are -- that show up on the user phone either Cascio, Tavasci or Amen, correct?
A. Correct. 8513

Q. Calls either made by them to that number, (310) 490-0144, or calls placed by that number to them that show up on their telephone records, correct?
A. That's correct.
MR. SNEDDON: All right. Probably to the relief of everybody, I'm not going to go through all 22 of these exhibits. I'm just going to show one on the Elmo, Your Honor, to illustrate the information that you've provided on document 884. And I'm selecting 3.
MR. SANGER: 15th?
MR. SNEDDON: Yeah.
Q. Okay. I've just taken the one that has a "3" in the lower right-hand corner. And this has the date of March 15, 2003, on it, correct?
A. Correct.
Q. And the -- obviously the cellular phones -- there's a cellular phone, four phones, depicted on the exhibit?
A. That's correct.
Q. Now, tell the jury what these -- what the numbers that you placed on there reflect in terms of the information provided on the Exhibit 884, the telephones.
A. Basically there are two lines for each phone to each of the other phones -- or, I'm sorry, from Brad Miller's phone to each of the other phones. 8514

There are directional arrows which indicate which direction the call went. And there are numbers associated with the arrows if there are any calls, and that will tell you how many calls went from each phone on that date.
Starting with the top connection between the Bradley Miller phone and the Frank Cascio phone, we have seven calls going from Cascio's phone to Miller's phone. And we have four calls going from Miller's phone to Cascio's phone.
With regard to the other two phones, there's a large zero in the center indicating there are no telephone calls to those phones.
Q. And was this the same approach that you took to all 22 charts that were prepared?
A. It is.
MR. SNEDDON: Okay. Could we have the lights, Your Honor?
Q. All right. Let's move on to another subject.
During the course of the investigation, were you assigned to review items of evidence that were seized from certain locations?
A. Yes, I was.
Q. And were you assigned to review some video footage that was obtained in the residence of Mr. Hamid Moslehi?
A. I was for Hamid also, yes. 8515

Q. And did you review a -- some footage of a --
that was filmed between Mr. Jackson and Mr. Bashir
having a conversation?
A. Yes, I did. I should clarify that that
actually came from Schaffel's residence.
Q. Oh, okay. It came from Mr. Schaffel's
residence?
A. Correct.
Q. All right. So you reviewed that item?
A. Yes.
Q. And what is the item number of that
associated with the sheriff's investigation?
A. Item No. 1360.
Q. And during the course of that conversation,
or during the course of the review of that, did you
actually see Mr. Jackson having a conversation with
Mr. Bashir?
A. I did.
Q. And did the subject of flying come up during
that conversation?
A. It did.
Q. And during the course of that conversation
between Mr. Bashir and Mr. Jackson, did you hear
anything said by Mr. Jackson with regard to alcohol?
A. I did.
Q. What did Mr. Jackson say?
A. I'll go ahead and read it from my report. I
quoted it. Mr. Jackson's statement was, "You don't 8516

have, like, a little bit of Jesus Juice, a little bit of wine."
Q. Now, was there anywhere else on that video that you reviewed that the term "Jesus Juice" was used by anybody else?
A. No.
Q. You were also assigned the responsibility -- give me a moment.
Are you familiar with an individual by the name of Louise Palanker?
A. Yes, I am.
Q. How did you become familiar with Ms. Palanker?
A. I interviewed Miss Palanker.
Q. Do you recall when that interview had occurred?
A. Not offhand. I know it was in the middle part of last year.
Q. And was it taped?
A. Yes, it was.
Q. And was that tape booked into evidence?
A. Yes, it was.
Q. And did you, at my request, review that tape?
A. I did.
Q. And what were you asked to review, looking for what?
A. I was asked to review any -- to find if 8517

there was any statement to the effect that Janet Arvizo had sold the kids at the comedy camp or sold the kids at the hospital.
Q. Was the word “sold” or “seldom”?
A. The actual word used was “seldom”; that Janet was seldom at the comedy camp. Janet was seldom at the hospital.
Q. Could you spell that, please?
A. S-e-l-d-o-m.
Q. It was not s-e-l, apostrophe, i-m?
A. No.
Q. And you reviewed the tapes and ascertained that to be correct?
A. Yes.
MR. SNEDDON: Nothing further, Your Honor.

CROSS-EXAMINATION
BY MR. SANGER:
Q. Okay. Let’s start with your first topic. You had three topics, the first one being the cell phone records. The summary chart that was Exhibit 885 that Mr. Sneddon put up, I believe he put page three up on the board, the summary charts?
A. Right here.
MR. SANGER: With the Court’s permission, I could put up my copy, if that’s all right.
THE COURT: That’s fine.
MR. SANGER: And Mr. Sneddon, is this the 8518

most recent?
MR. SNEDDON: (Nods head up and down.)
MR. SANGER: Okay.
Q. I'm going to put up page three, because that's the one that was shown as a representative -- that was shown as a representative page and there's -- actually, I forgot how many pages we were told, but quite a number of pages to this, right?
A. 20 some-odd, I believe.
Q. 20 some-odd pages. When was this prepared?
A. Last night.
Q. And when was it delivered to defense counsel?
A. I didn't deliver it, but I would assume this morning.
Q. This morning. Okay. Now, 884 -- May I just put up the first page of that? It would be my copy, if that's all right.
THE COURT: Yes.
MR. SANGER: Mr. Sneddon, this is the correct --
MR. SNEDDON: Fine.
MR. SANGER: All right.
Q. 884 is a several-page -- I think a four-page exhibit that has the summary of all the records, correct?
A. Correct.
Q. And those were faxed to my house last night 8519

by you, I believe; is that correct?
A. Yes, they were.
Q. And that would have been about 7:22 in the evening?
A. Correct.
Q. All right. On this summary chart --
And we can have lights again, if that's all right, Your Honor.
On this summary chart, you have a record of phone calls that were made to and from what you've now determined -- what you've now labeled as the Bradley Miller telephone, correct?
A. Correct.
Q. Maybe it would be helpful, I'm sorry to do that, but if I could put up 885, that one page again. Because on these, you've now labeled which way they were going and the number going each way, correct?
A. Correct.
Q. All right. There you go. And you show four phones and those -- that same graphic is used for each of the pages; is that right?
A. Correct.
Q. That's why you have "0" here, because there were zero --
A. Correct.
Q. -- on this particular date.
On the other hand, this also tells us that 8520

what you were able to analyze were calls going to and from what you've labeled as the Bradley Miller telephone, to and from the Vincent Amen telephone, the Evelyn Tavasci/MJJ PROD telephone, and the Frank Cascio telephone; is that correct?
A. Correct.
Q. Now, was there just one number to Evelyn Tavasci that you looked at?
A. That's the only number that came out.
Q. And that is a cell phone?
A. Yes.
Q. All right. Now, did you do this by analyzing just the records of the Amen, Tavasci and Cascio telephone?
A. We looked at every record that we have with the computer system, and these are the only three records that came out with any calls to that telephone.
Q. Okay. Do you have the records for what's called the Bradley Miller phone?
A. We only have a one-sheet piece of -- if we're talking about toll records, no, we do not. We do have a one-sheet page that tells us that it comes back to Hamid Mozaffarian, a cellular.
Q. And just because we have two Hamids we've talked about, Hamid Mozaffarian has nothing to do with Hamid Moslehi, correct?
A. No. 8521

Q. I said, “Correct.” I’m sorry. Let me ask
the question, does Hamid Mozaffarian have anything
to do with Hamid Moslehi?
A. No.
Q. Thank you.
Therefore, you did not have the records from
that Miller phone to see what numbers the Miller
phone called, correct?
A. Correct.
Q. Nor to see what incoming calls, if any, were
recorded for that phone, correct?
A. Other than for these three telephones up
here, no.
Q. I’m sorry, I’m saying for the Brad Miller
phone itself, right?
A. No, but these records do show calls to and
from the Bradley Miller phone. We don’t have
Bradley Miller’s records, though.
Q. Thank you. That’s what I was getting at.
I understand you have the other records.
But for Brad Miller you have one page that showed
the subscriber information; is that correct?
A. Correct.
Q. Has that page been marked as an exhibit in
this case --
A. I don’t know.
Q. -- to your knowledge? Okay. All right. So
therefore -- let me withdraw that. 8522

The Geragos records -- you had records pertaining to the Law Firm of Geragos & Geragos, correct?
A. Correct.
Q. You didn't have the toll records, did you?
Did you --
A. I believe -- I believe they were actually sent. However, those were not -- we were not supposed to receive those, so we have not included those in any analysis.
Q. All right. Because Mr. Geragos' law firm has attorney-client privilege communications, I take it?
A. And more specifically in the warrant that I wrote, I laid out that we were not going to seek toll records.
Q. All right. And you did that because you understood that that might create a problem?
A. It could unless we were able to show him as being a member of a conspiracy.
Q. All right.
A. And part of the crime that occurred.
Q. All right. So the point being, that you did not have an opportunity to evaluate calls between Mr. Miller's phone, the one you've attributed to him, and the Geragos law firm?
A. Correct.
Q. In other words, you didn't have records 8523

going either way on that one, right?
A. We have records. We did not analyze them, yes.
Q. When I say “have,” did you not have them to look at and analyze and --
A. Correct.
Q. All right. And you did not have records pertaining to any cell phones that Mr. Geragos might have, correct?
A. Correct. Other than subscriber records. We do see subscriber records on that also.
Q. And when you say that, that means it just shows whose telephone number it is, right?
A. Correct.
Q. So therefore, did you not have available to you to analyze records to determine the -- any calls between Mr. Miller’s phone and Mr. Geragos’ cell phone?
A. I’m having a slight problem with that, because we did have the records. We simply set them aside and did not use them with regard to the Geragos records.
Q. And that was pursuant to the Court-ordered search warrant that you requested; is that correct?
A. Right.
Q. So I think I used the word “have available to analyze.”
A. I just want to clarify. They were sent, we 8524

just did not use them.
Q. Okay. All right. So what we have here --
it's not a big thing, I just want to clarify this.
What we have here basically is the analysis of the
other records that -- for which there are toll
records showing communications with this phone, but
not any phone numbers associated with Geragos?
A. Correct.
Q. All right. Now --
THE COURT: Can we take a break?
MR. SANGER: That would be fine. But, Your
Honor, we do need to address the Court on one matter
briefly before or after we take the break.
THE COURT: All right. Let's let the jury go
ahead and take their break, I'll remain a moment.
Officer, you may step down.

(The following proceedings were held in
open court outside the presence and hearing of the
jury:)

THE COURT: All right.
MR. SANGER: Your Honor, I know this is the
fourth time, but I think you can see this coming.
The -- what's called the Hamid footage or the
outtakes footage that we had asked to play --
THE COURT: Yes.
MR. SANGER: -- we now have -- the 8525

government has now quoted from that footage, and therefore we would ask to play the entire statement to put that -- those quotes in context.
And I know I've asked the Court before, and I don't mean to be rude.
THE COURT: I was just going to say, one more time, if it's the fourth time, you're keeping track.
MR. SANGER: Yes.
THE COURT: Not in the People's case.
MR. SANGER: Very well. I hope the Court understands, there was a reason, because they quoted from it.
THE COURT: Well, if you could isolate out one piece that has to do with that one piece.
However, you have to remember that I watched all those outtakes, and I know how many hours and how much repetition is there.
MR. SANGER: Right.
THE COURT: So we're not talking about something I'm not totally familiar with. And if you want to take the time to go and find the material specifically that they're relating to and show a small portion that relates to that, that's fine.
But that doesn't give you license to play hours and hours of that takeout -- outtake, whatever it's called.
MR. SANGER: I think it's like two hours and 45 minutes or something like that. 8526

THE COURT: Well, it seemed like -- all right.
MR. SANGER: The second one -- I understand what the Court said. And please, Your Honor, understand we just learned this right now, that they were going to quote that section. So I'll have to see if I can find it and maybe do it later.
The second thing I wanted to address is there's been now a quote from the Louise Palanker tape. That is a shorter tape, and I do think it would be appropriate to play that. That's her interview.
THE COURT: I don't see that either. It's up to -- if is there anything specific you want to play, you know, in rebuttal to what they've just put on, or if there's some reason to play the whole tape in your case, you may, but I'll have to find out what it is. But one -- you know, just clarifying that one word doesn't call for the playing of the whole tape.
MR. SANGER: So having moved, those are denied and we're on a break.
THE COURT: Yes.
MR. SANGER: All right. Thank you.
(Recess taken.)
--o0o--

REPORTER'S CERTIFICATE

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

I, MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304, Official Court Reporter, do hereby certify:

That the foregoing pages 8477 through 8527 contain a true and correct transcript of the proceedings had in the within and above-entitled matter as by me taken down in shorthand writing at said proceedings on May 3, 2005, and thereafter reduced to typewriting by computer-aided transcription under my direction.

DATED: Santa Maria, California, May 3, 2005.

MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA
SANTA MARIA BRANCH; COOK STREET DIVISION
DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, MAY 3, 2005

8:30 A.M.

(PAGES 8529 THROUGH 8699)

REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304
BY: Official Court Reporter 8529

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I N D E X

Note: Mr. Sneddon is listed as “SN” on index.
Mr. Zonen is listed as “Z” on index. Mr. Auchincloss is listed as “A” on index.
Mr. Nicola is listed as “N” on index. Mr. Mesereau is listed as “M” on index.
Ms. Yu is listed as “Y” on index. Mr. Sanger is listed as “SA” on index.

PLAINTIFF’S
WITNESSES DIRECT CROSS REDIRECT RECROSS
ZELIS, Paul 8533-SA
(Re-called) (Continuing)
ROBEL, Steve (Re-called) 8537-SN 8545-M
O’BRYAN,
John Duross 8552-A 8601-M 8641-A
8659-A 8660-M (Further) (Further)
8662-A
(Further)
PROVENCIO, Rudy 8664-Z

1 E X H I B I T S
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PLAINTIFF'S NO. DESCRIPTION I.D. EVID.
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THE COURT: Go ahead.
MR. SANGER: May I proceed? Okay.
Q. All right. We're going to Point No. 2 of your testimony, which was video footage that you reviewed. And I think you established that you had obtained this from the evidence bookings that pertained to the Marc Schaffel residence; is that correct?
A. Correct.
Q. And what sheriff's identification number was on the item that you referred to?
A. Item 1316, 1-3-1-6.
Q. And Item 1316 is booked into sheriff's evidence, correct?
A. Correct.
Q. And it remains booked into sheriff's evidence as we sit here right now, correct?
A. The original is, yes.
Q. The original. And you gave us a copy of that, right?
A. Correct.
Q. And do you know if that's the same as your Sheriff's Item 913, -10, -11 and -12?
A. I don't know without reviewing materials.
Q. In any event, what you reviewed was -- it was a CD, or a DVD, or what?
A. The original, I believe, was either -- it was a cassette tape. I don't recall if it was a 8533

Beta cassette tape or a regular cassette tape.
Q. Okay. And you provided that, a copy of that, to us in the form of a DVD; is that right?
A. Correct.
Q. So the original is some kind of tape.
Now, what did you review? You didn't review a Beta cassette tape, did you?
A. I reviewed both, actually. I participated in the process of changing it over to the DVD format and watched it at that time.
Q. All right. But most recently when you reviewed it for this quote that you -- that you recited on direct examination, did you review the Beta cassette tape or the DVD?
A. The DVD.
Q. All right. And that's because Beta cassette tapes have to be played on some kind of a professional machine; is that right?
A. Correct. And we only have one, and it's in Santa Barbara.
Q. All right. So to lay the foundation here for something we'll do in the future, I understand that you will produce to the Court your Sheriff's Identification No. 1316, which is the original Beta cassette tape; is that correct?
A. Correct.
Q. And then you have a DVD that is -- how is that labeled? 8534

A. It would be labeled “Item 1316,” and more specifically the actual title that was on the cassette tape in question.
Q. I’m sorry, I just want to make sure I’m clear, and I’m not clear.
If we say at some future date we would like to play this DVD that’s in sheriff’s evidence right now, how do we refer to it? 1316, the DVD? Or is there another number?
A. The most appropriate would be to say Item 1316 and then also provide the title, “MJ/Bashir, Summer 2003.”
Q. All right. So that’s what you reviewed. Now, I understand you did not review recently 913, -10, -11 and -12?
A. Correct.
Q. Which were sheriff’s numbers. Did you ever review those?
A. I may have. I’m not certain at this point.
Q. All right. And then going to your third point, you referred to a Louise Palanker interview, correct?
A. Correct.
Q. And you and, I believe it was Detective Zelis, were present during this interview; is that correct?
A. That’s correct.
Q. And it was surreptitiously tape-recorded, 8535

correct?
A. Yes, it was.
Q. And how long did that interview last?
A. I believe it was approximately 40, 45 minutes in length.
Q. And that particular item is on a DVD; is that right?
A. CD. Yes.
Q. CD. Was it recorded on a CD or --
A. It was recorded on a digital recorder and downloaded into CD format.
Q. Okay. So the actual item that is Sheriff's Item 1790 is the original recording; is that correct?
A. The CD recording.
Q. And that's in sheriff's evidence, booked into sheriff's evidence at the substation; is that correct?
A. Right.
Q. And you -- you agree to bring those to court for whatever purpose we'll use them in the future; is that correct?
A. Absolutely.
MR. SANGER: All right. Thank you. Based on that, I have no further questions, Your Honor.
MR. SNEDDON: Nothing further.
THE COURT: All right. You may step down. 8536

MR. SNEDDON: Detective Robel.
THE COURT: You're still under oath. You may be seated.

STEVE ROBEL
Having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION
BY MR. SNEDDON:
Q. Detective Robel, during the course of this investigation, were you involved in an interview with Debbie Rowe?
A. Yes, I was.
Q. And was that interview tape-recorded?
A. Yes, it was.
Q. And was it tape-recorded with her knowledge?
A. Yes, it was.
Q. And who else was present during the taping?
A. Lieutenant Klapakis.
Q. And do you recall where that took place?
A. Yes.
Q. Where was that?
A. In Los Angeles.
Q. Do you recall what day that took place?
A. I believe it was on March the 3rd, 2004.
Q. So over a year ago?
A. Yes. 8537

Q. All right. I'm going to ask you a few questions about that interview. First of all, were you asked to review that tape?
A. Yes, I was.
Q. And you were asked to review it in detail, correct?
A. That's correct.
Q. And did you do that?
A. Yes, I did.
Q. And when did you do that?
A. Yesterday.
Q. And did you compare it to a transcript?
A. Yes, I did.
Q. Now, during that conversation that you had with Miss Rowe, did she at any time during the course of that transcript describe the defendant as a good parent?
A. No, she didn't.
Q. At any time during that conversation that you had with her over a year ago did she describe him as a wonderful father?
A. No, she didn't.
Q. At any time during the course of that interview with her over a year ago, did she describe him as a caring person?
A. No.
Q. And does she at any time during that interview use the word "generous" to describe the 8538

defendant?
A. No.
Q. During the course of the conversation that you had with Miss Rowe over a year ago, did she express to you, during the course of that interview, comments about her concerns of his parenting skills?
MR. MESEREAU: Objection; leading.
THE COURT: Overruled.
THE WITNESS: Yes.
Q. BY MR. SNEDDON: And in particular, what did she say?
MR. MESEREAU: Objection. Opinion; relevance.
THE COURT: Overruled.
You may answer.
THE WITNESS: She referred to Michael as a sociopath and his children as being possessions.
Q. BY MR. SNEDDON: Did she at other points during the conversation express any other areas of concern --
A. Yes.
Q. -- about the defendant and the children's relationship?
A. Yes, she did.
Q. How many different areas did she talk about? Without going into the details of what she talked about, the areas, how many areas of concern?
A. I recall there were three. 8539

Q. And did each one of those reflect negatively upon the defendant's parenting skills?
MR. MESEREAU: Objection; leading.
THE COURT: Calls for a conclusion, sustained.
Q. BY MR. SNEDDON: Were those three areas discussed in the context of him being a good or a bad parent?
A. Yes.
Q. And was it good or bad?
A. It was bad.
Q. During the course of the interview with Miss Rowe, did you discuss the topic of whether or not the comments that she made during the course of her interview that was included in the Maury Povich program were truthful?
MR. MESEREAU: Objection; leading.
MR. SNEDDON: Let me rephrase that, Judge. I need to rephrase it anyhow, to be correct.
Q. During the course of your interview with Miss Rowe over a year ago, did you discuss with her the topic of the truthfulness of her statements made during the time -- the nine-hour interview that occurred at Mr. Schaffel's house?
A. Yes, I did.
Q. And what did she say?
A. She told me that she had a plan since she got divorced from Michael in 1999. 8540

Q. Did she tell you who made the plan up?
A. Yes.
Q. Who?
A. She and Mr. Jackson.
Q. Together?
A. Yes.
Q. And what was the plan?
MR. MESEREAU: Objection. Relevance;
foundation.
MR. SNEDDON: Your Honor, this is
impeachment.
THE COURT: I'm going to sustain the
objection. I don't understand how that question
could lead to an answer that would impeach something
she said in front of this jury.
MR. SNEDDON: That the comments were
truthful.
THE COURT: But that's not the question
that's been asked. You asked about a plan she had
with Mr. Jackson. So I'm sustaining the objection.
Q. BY MR. SNEDDON: Were you present during
Miss Rowe's testimony here in court?
A. Yes, I was.
Q. And did you hear Miss Rowe testify about the
statements that she made during that nine-hour
interview?
A. Yes.
Q. And you heard her testify that those 8541

statements were -- were truthful in court?
A. Correct.
Q. Now, did you have a conversation with Miss Rowe over a year ago when she told you about the comments -- about the same comments that she made in court here and whether they were truthful or not?
MR. MESEREAU: Objection. Misstates the evidence, leading, and vague.
MR. SNEDDON: Let me rephrase it, Judge. I might be able to solve the problem.
Q. During your conversation with Miss Rowe, did she say anything to you that was inconsistent with her statement in this courtroom that those statements were true when she made them on the film?
A. Yes.
Q. What did she say?
MR. MESEREAU: Objection. Calls for a narrative; vague.
THE COURT: Overruled.
THE WITNESS: She said that she and Mr. Jackson, when they got divorced, that they had a plan --
MR. MESEREAU: Objection. Same objection as before. He's trying to answer the same question, Your Honor.
THE COURT: Sustained.
Q. BY MR. SNEDDON: All right. You told us all about the plan. Tell us what she said after the 8542

plan.
A. She said she --
MR. MESEREAU: Objection; vague.
THE COURT: Overruled.
You may answer.
THE WITNESS: That she stuck with her plan
to talk positive about Mr. Jackson, as she's done
throughout news conferences that she's had since
they were divorced.
Q. BY MR. SNEDDON: Did she indicate to you
during this conversation whether those statements
were true or false?
A. Yes, she did.
Q. What did she say?
A. And she says that they were false.
Q. All right. I want to go on to another
subject. Excuse me just a second.
All right. Sergeant Robel, I'm handing you
the exhibit book. First of all, you recognize those
as being the Neverland Ranch logs, correct?
A. Yes, I do.
Q. Now, during the course of the search warrant
at the ranch on November 18th of 2003, were certain
logs seized from the ranch?
A. Yes, there were.
Q. You're aware of that?
A. Yes, I am.
Q. And you reviewed those logs, as a matter of 8543

1 fact, have you not?
2 A. Yes, I have.
3 Q. And do any of the logs that you reviewed
4 that were seized from the ranch go beyond the date
5 of January 1st, 2003?
6 A. No.
7 Q. Now, there's a medical report, one-page
8 medical report that does, but all the logs
9 themselves were before, correct?
10 A. That is correct.
11 Q. During the course of this investigation,
12 did, to your knowledge, the Santa Barbara Sheriff's
13 Department in any other search warrant seize any
14 records or logs associated with the months of
15 January, February or March of 2003?
16 A. No.
17 Q. Now, in the exhibit book, towards the end,
18 there are logs for the months of February and March
19 of 2003, correct?
20 A. Yes.
21 Q. And what exhibit numbers, what two exhibit
22 numbers are those? They should be tabbed.
23 A. 335 and 334.
24 Q. And those logs are log entries from the year
25 2003, correct?
26 A. That is correct.
27 Q. And those have been described by Mr. Sanger
28 as being government documents. Do you know where 8544

1 they came from?
2 A. Yes, I do.
3 Q. Where did they come from?
4 A. It came from the defense.
5 Q. Do you recall when it was that we obtained
6 those records from the defense?
7 A. Yes.
8 Q. When?
9 A. To the best of my recollection, I believe it
10 was about three to four months prior to us starting
11 trial.
12 Q. Months?
13 A. Actually, excuse me. I'm sorry. Weeks.
14 Q. So they've been in the defense possession
15 for over a year?
16 A. That is correct.
17 MR. SNEDDON: Nothing further.
18
19 CROSS-EXAMINATION
20 BY MR. MESEREAU:
21 Q. What is the date of your interview with
22 Debbie Rowe?
23 A. March the 3rd, 2004.
24 Q. Did you do an interview with her on
25 February 23rd, 2004?
26 A. Yes, that was a -- I talked with her on the
27 phone.
28 Q. And that was recorded, correct? 8545

A. That was not recorded.
Q. The transcript -- do you have a transcript of the interview you're referring to?
A. Yes, I do.
Q. And could I --
May I approach, Your Honor, just to take a look at the transcript?
THE COURT: Yes.
Q. BY MR. MESEREAU: Okay. And you say you just listened to the tape the other evening?
A. I listened to it yesterday.
Q. Do you ever ask the question, "Is Michael a good parent?"
A. I don't recall asking that.
Q. You never had a conversation with her about his parenting skills at all, did you?
A. I don't recall asking that question.
Q. Okay. In response to the prosecutor's question to you, you indicated that Ms. Rowe, during your conversation, had not said some of the things she said in open court, correct?
A. Correct.
Q. But there are things she said in open court that you didn't ask her about in your interview, correct?
A. Correct.
Q. She said Michael Jackson was generous in open court. Do you remember that? 8546

A. Yes.
Q. You never asked her if Michael Jackson was generous, did you?
A. I don't recall asking that.
Q. She said that Michael Jackson was her friend, correct?
A. Correct.
Q. You never asked her in your interview if Michael Jackson was her friend, right?
A. I don't recall asking that.
Q. In fact, at one point in your interview, she said she wasn't really supposed to talk a lot about Michael Jackson, because her lawyer had advised her as such, right?
A. Correct.
Q. And when she said that to you, you didn't ask her a lot of questions about Michael Jackson as a person after that, right?
A. She volunteered some of the stuff.
Q. Now, at that particular point in time, did you know when she had last seen Michael Jackson? Excuse me, let me rephrase that better. At the point in time when you interviewed Debbie Rowe, did you know when she had last seen Michael Jackson?
A. I believe that she had told us that it had been two to three years.
Q. Now, at the particular point in time when 8547

you interviewed Debbie Rowe, she was rather upset
about their family law proceeding, true?
A. No, I don't think that's correct.
Q. Do you remember she said to you, "Officer,
I have Michael's Achilles tendon, I have the kids.
I don't have them, but I'm going to have them." Do
you remember that?
A. I remember something to that effect.
Q. Isn't that what she said to you?
A. She did, Mr. Mesereau, but I don't believe
that her child custody issue was going on at that
time.
Q. Well, she told you she had a lawyer named
Iris Finsilver, did she not?
A. Yes, she did.
Q. Did you know why she had a lawyer named Iris
Finsilver?
A. At the time I knew she had her because of
the filming that she participated in where Iris was
present.
Q. She told you in that interview that she was
in a dispute with Mr. Jackson about the children,
right?
A. I don't recall that.
Q. Did you know she was in a dispute with Mr.
Jackson about the children when you conducted that
discussion with Debbie Rowe?
A. To the best of my knowledge, I want to say 8548

that I did not.
Q. Do you recall in the first page of your interview -- and in my transcript it's page one. I don't know what page it is in yours. It's a different transcript.
Do you recall she says -- let me try and restate that.
Look at the fourth quote down of Debbie Rowe. It starts with, "Iris." Do you see that?
A. It said, "Iris, I..."
Q. Yes, exactly.
A. Okay. I'm there.
Q. She says, "F-u-c-k his defense at this point. I want the kids." Do you see that?
A. Yes, I do.
Q. Did you think that might have some relevance to a dispute between Mr. Jackson and Ms. Rowe when you heard her say that?
A. By reading it, you could interpret that, but at the time I did not.
Q. Okay. And this was the conversation where she talked about Janet Arvizo's history of orchestrating lawsuits, correct?
MR. SNEDDON: Your Honor, I'm going to object as beyond the scope of direct examination. We were very pointed in our questions.
THE COURT: Sustained.
Q. BY MR. MESEREAU: This was a conversation 8549

where she said, “Michael is very easily
manipulated,” true?
MR. SNEDDON: Object. Same objection.
THE COURT: Sustained.
Q. BY MR. MESEREAU: Now, do you remember
Ms. Rowe in this conversation responding to your
question, “Is Michael the kind of person that would
keep a journal?” Do you remember that?
A. I do remember that.
Q. And she said, “He doesn’t keep a journal.
He’s not organized enough to keep a journal.” Do
you remember that?
MR. SNEDDON: Object. Same objection.
MR. MESEREAU: I think it’s all in -- they
opened the door on this conversation about Mr.
Jackson, Your Honor.
THE COURT: I’m having the same difficulty
with you as I’m having with the District Attorney.
I can’t really tell where you’re going from that
question, and it appears to be beyond the scope. So
I’ll sustain the objection. If you can rephrase it
so I can see it better, that’s fine.
Q. BY MR. MESEREAU: Ms. Arvizo -- excuse me.
Ms. Rowe --
Let me start again. How did this
conversation originate? Did you call her?
A. For this particular interview?
Q. Yes. 8550

A. Yes. We had a phone discussion, and she agreed to meet with me on a specific date and time.
Q. And where did she meet you?
A. In the Los Angeles area, Calabasas.
Q. Was her attorney there?
A. No.
Q. Okay. But you begin the conversation with reference to her attorney, correct? Really on the first page. The sentence we just discussed where it starts by saying, “Iris….”
A. Correct.
Q. You discussed her attorney almost at the very beginning of the interview, correct?
MR. SNEDDON: Your Honor, I object. Asked and answered.
THE COURT: Sustained.
Q. BY MR. MESEREAU: And this was the interview where she talked about Schaffel and Konitzer and Dieter trying to steal from Mr. Jackson, correct?
MR. SNEDDON: Object, Your Honor, beyond the scope.
THE COURT: Sustained.
MR. SNEDDON: Ask the Court to admonish counsel. This --
THE COURT: Next question.
MR. MESEREAU: Yes. No further questions, Your Honor.
MR. SNEDDON: Nothing further, Your Honor. 8551

THE COURT: You may step down.
MR. AUCHINCLOSS: Your Honor, we call as our next witness Duross O'Bryan.
THE COURT: When you get to the witness stand, remain standing. Face the clerk here and raise your right hand.

JOHN DUROSS O'BRYAN
Having been sworn, testified as follows:

THE WITNESS: I do.
THE CLERK: Please be seated. State and spell your name for the record.
THE WITNESS: John Duross O'Bryan. J-o-h-n; D-u-r-o-s-s; O-B-r-y-a-n.
THE CLERK: Thank you.

DIRECT EXAMINATION
BY MR. AUCHINCLOSS:
Q. Good morning, Mr. O'Bryan.
A. Good morning.
Q. What is your occupation, please?
A. I am a certified public accountant in the State of California.
Q. And by whom are you employed?
A. With the firm of Alex Partners.
Q. Tell us a little bit about Alex Partners, if 8552

you would.
A. Alex Partners is an international financial consulting firm.
Q. And what is your title with Alex Partners?
A. I am a managing director.
Q. Prior to joining Alex Partners, did you work with other accounting firms?
A. I did, yes.
Q. And what were their names?
A. I started my career in 1978 with the international public accounting firm of Peat, Marwick, Mitchell & Co., now called KPMG. I was there for approximately six or seven years. And I went off to my own firm for about nine months to a year. And then joined the international public accounting firm of Coopers & Lybrand, which merged and it's now Pricewaterhouse Coopers. I was with them basically from 1985 through 2003.
Q. So what type of firms are KPMG and Pricewaterhouse Coopers?
A. They were referred to as The Big 8 accounting firms, which are the large accounting firms. They're international, both domestic and abroad, all over the world.
Q. All right. Let's start with KPMG. Can you tell us a little bit about your experiences there?
A. As I mentioned, I started in 1978, and I was really auditing, which is accounting. I have a 8553

1 accounting degree. I worked auditing companies'
2 financial statements, auditing individuals'
3 financial statements, and effectively auditing those
4 numbers to make sure they are accurate and in
5 conformity with accounting guidelines.
6 Q. How would you give a lay definition of what
7 an audit is, general terms?
8 A. An audit is basically a function performed
9 by auditors, CPAs that work principally with The
10 Big 8, or now I think they call them The Final 4
11 accounting firms, that simply looks at, on a test
12 basis, transactions and support the company's
13 financial statements, and then gives an opinion
14 about the accuracy of those financial statements,
15 whether or not they are accurate and whether or not,
16 in fact, they conform with what's called generally
17 accepted accounting principles.
18 Q. Tell us a little bit about your experiences
19 at Pricewaterhouse Coopers.
20 A. I started with Pricewaterhouse Coopers in
21 1985, or the predecessor firm. I was there through
22 2003. I continued doing audits through
23 approximately 2000, 2001. And in about 1988,
24 October the 1st of 1988, I was admitted to the
25 partnership. And on and around that time, I was
26 also asked to begin working, assisting individuals
27 and/or companies in what's called disputes,
28 litigation matters, whether or not there's damages, 8554

malpractice issues, whether or not an accountant did something wrong, any type of matter involving a dispute or an investigation.
Q. Have you participated in financial accounting investigations?
A. I have, yes, on several occasions.
Q. And as it relates to financial advisory services - I think you mentioned that - what kind of engagements have you worked?
A. Financial advisory services was one of the divisions within The Big 4 firms. I was in charge of that in both Los Angeles and in New York. That division does dispute analysis and investigation, work investigations that we're talking about. It also does due diligence work, mergers and acquisitions, bankruptcy work valuation, et cetera. I was involved in most of those practices of being the partner in charge. But certainly specifically as a partner responsible, I worked on most of those engagements, those type of engagements.
Q. Do those engagements include forensic accounting investigations?
A. They do, yes. One of the -- the title "DA&I," the "I" stands for investigation, which is an accounting investigation of financial records.
Q. Okay. So tell us what specifically you mean when you say "a forensic accounting investigation." 8555

A. Well, if an audit is really looking at a company's financial statements and looking on a test basis to be able to opine as to the accuracy and conformity with those financial statements with accounting principles, a forensic accounting investigation is completely different. It basically looks at all the records you can possibly get, all of the information you can possibly get, and it attempts to reconstruct what happened and what went on in any period of time.

So the scope is completely different and the type of procedures are completely different. It's much more invasive. It's much more intrusive. And it is really, in fact, an investigation, not a sampling of documents like an audit is.

Q. So can you give us an idea of what kind of forensic accounting investigation you have participated in?

A. I've participated in dozens. Some of them involving thousands of dollars at issue, some of them involving billions of dollars at issue, and companies small and large, public, private, and not for profit.

Q. And are these investigations primarily for the purposes of litigation, prelitigation, testifying in court, that type of thing?

A. Some of them involve litigation. Probably most of them do. But there's a vast majority that 8556

could just be an investigation that the company has authorized or the company is asking for or individuals are asking for to ask what's going on within their company. So it may not be a litigation or it may not be a civil or criminal matter. It could simply be that the company is interested in what's going on in their business and asked to have an investigation performed.

Q. Have you previously been asked to testify in California courts or in courts around the country as an expert in the area of a forensic accounting investigation?

A. I have, yes, on several occasions.

Q. Do you have an accounting degree?

A. I do, yes. I have a Bachelor of Science degree in accountancy from Northern Arizona University.

Q. Presently what are your hourly rates at Alex Partners?

A. My rate on this engagement is $385 an hour.

Q. Okay. I'll try to be quick then. How many hours have you put into this investigation or into this particular task?

A. I've put in probably 20 to 30 hours possibly.

Q. Okay. So tell us about your assignment in this particular case, the case of People v. Jackson. Specifically what were you asked to do in this 8557

matter?
A. I was asked to look at the financial condition of Mr. Jackson leading up to February 2003.
Q. All right. And did you prepare a PowerPoint presentation to assist the jury in describing just exactly what you did in this case?
A. I did, yes.
Q. All right. Would you consider this to be a forensic accounting investigation?
A. The work that we performed was absolutely a forensic accounting investigation, yes.
Q. And have you ever performed other work that entailed a similar task, looking at someone's personal finances for forensic purposes?
A. Absolutely, yes.
Q. Okay. So let's talk about some terminology. What does the term "financial condition" mean for purposes of your testimony here today?
A. I'm defining "financial condition" as basically an individual's assets, their liabilities, their net worth. One's net worth is simply the difference between their assets and liabilities. If you have more assets than liabilities, you have positive net worth. If you have more liabilities than assets, you have negative net worth. So we look at the assets and the liabilities. We look at the income. We look at the 8558

1 expenditures. That's how I would really define
2 one's financial condition, and really how those all
3 interrelate and what kind of condition they're in.
4 Can they afford to pay their bills, et cetera.
5 Q. You're going to be, I'm sure, throwing these
6 words around, so I want to make sure everybody's
7 clear on them.
8 Assets, would that just be -- a simple way
9 of saying assets, would that be property that
10 someone owns?
11 A. Yeah, I'm sorry. Assets are really anything
12 that is an asset, which is your house, a car,
13 artwork, intangible things like maybe a copyright.
14 Anything that creates benefit to you is an asset.
15 And so that's what I'm referring to as an asset.
16 A liability is just the opposite of that.
17 It is something that's an obligation. You owe
18 something, somebody something, meaning a bank for
19 your mortgage on your house, a lease on your car,
20 a loan securing some of the copyright things that
21 you have. Any of those there becomes obligations,
22 things that you actually have to pay for.
23 And then the difference between the two is
24 simply a mathematical function of assets minus
25 liabilities equals net worth.
26 Q. Okay. And can a net worth be positive as
27 well as negative?
28 A. Yes. As I mentioned -- 8559

Q. Go ahead.
A. -- if you have more assets than liabilities, conceptually, if you gain the value of all of those assets at whatever is stated, say you have $100 worth of assets, and you can really get $100 for those assets, and you have $50 worth of liabilities, and you're really only going to pay $50, then you have a net worth of $50. At the end of the day, you have $50 cash sitting in your hand.
On the other hand, you could have a situation where your assets are $50, and you'll only get $50 for them. You really are going to pay $100 in liabilities, and therefore you have a negative net worth. At the end of the day, you will be short $50, or negative net worth.
Q. All right. Before we get into your opinions, let's talk generally about how you conduct a forensic investigation of this type.
Typically how would you start a financial forensic accounting investigation?
A. Well, you ask for as many documents as you can get, because again, it's not a sampling of documents. It's everything you can possibly look at. And you get as much information as you possibly can during that relevant period of time. And the place we typically like to start with is a set of financial statements, and those being a balance sheet on an income statement, potentially to help us 8560

understand what's going on within that company or that individual's financial condition position.
Q. Okay. I think maybe this would be a good point to segue into your PowerPoint presentation.
MR. MESEREAU: Objection. Foundation; relevance; Court ruling.
THE COURT: The PowerPoint presentation is -- what does it consist of?
MR. AUCHINCLOSS: It consists strictly of some basic information about what Mr. O'Bryan does. It also describes his expert opinions in this matter, and it also includes the specific information that he relied upon in forming those opinions.
THE COURT: So it's demonstrative of his testimony?
MR. AUCHINCLOSS: Yes, it is, Your Honor.
THE COURT: Have you seen the presentation? Have you seen the materials?
MR. MESEREAU: I was handed a couple of documents that -- I think that has it.
MR. AUCHINCLOSS: Yes, I provided it to counsel yesterday. Actually, day before yesterday.
THE COURT: Generally, this is the kind of thing that if the witness was given a piece of chalk, he could go to the blackboard and, as he testified, put this up.
MR. MESEREAU: He's referencing select 8561

paragraphs from documents, one after another, without showing the whole document, and that would be one of our objections as well.
MR. AUCHINCLOSS: And if counsel wishes to introduce those documents at the end of his cross-examination, I don't think we'll have an objection to that.
THE COURT: I'll let you go forward with it on my theory that it's the type of help a witness normally could do with a piece of chalk or a marker and some butcher paper, but in these days we do it with PowerPoint. If it appears to be something beyond that type, I'll have to reevaluate it.
MR. AUCHINCLOSS: Very well.
MR. MESEREAU: Thank you, Your Honor.
MR. AUCHINCLOSS: All right. If we could have "Input 1," Your Honor.
All right. If I may approach, Your Honor, and provide the laser pointer to the witness.
Q. I'll give you this to use, if you wish.
If you could, Mr. O'Bryan, please take us through the components of a financial statement.
A. The components of a financial statement, as shown up on the board, are really made up of four different components, the first being the balance sheet. And all that is is a statement, part of the financial statements that are typically referred to in a set of financial statements, that lists out the 8562

assets and the liabilities, and then shows net worth. And it literally does balance. That's why they call it a balance sheet, because the total of assets will equal the total of liabilities plus net worth, so it balances. So it's simply a listing of assets and liabilities, and then it shows net worth as the difference.
Q. Before we --
THE COURT: I'm sorry, before you ask the next question - I thought you were through with your answer - I want to have Mr. Sneddon and Mr. Mesereau approach for a moment.
(Discussion held off the record at sidebar.)
THE COURT: All right, Counsel. Go ahead.
MR. AUCHINCLOSS: All right. Thank you, Your Honor.
Q. I think we were at income statement.
A. And the second set of -- the second statement within a set of financial statements is an income statement, and that simply lists out all of an individual's or company's income or revenues, and it subtracts out all of the expenditures or expenses. And the difference between those two is either a net income or a net loss. So that's the income statement.
The third is what's called a statement of cash flows. It is simply a statement that shows cash, and where cash came in and where cash goes 8563

out. And at the end of the year, it shows what the ending cash balance is. Just cash.
And then the last component of a set of financial statements is notes. And those notes are a narrative addition to all of the numbers, and they're simply informative. They simply tell you the basis that the financial statements are put together and some of the different accounting policies and principles used in accumulating the financial statements.
Q. All right. Let's look at the next slide.
What do you look for in these financial statements?
A. You first try to get an understanding of the business, or the assets and liabilities. You then look at the significant assets and liabilities and try and understand what those are. You look for unusual relationships, ones that you should do additional information and/or additional research on. And then lastly, you just look for unusual issues that should be considered during your investigation.
Q. All right. In this particular investigation, were you able to find any financial statements?
A. We did, yes. We found a June 30th, 2002, financial statement.
Q. All right. What type of financial statement was this? 8564

A. It was a balance sheet only. Just that first statement, just the balance sheet showing assets and liabilities.
Q. Okay.
A. And net worth.
Q. And that's what you've described as being balancing out. Subtract the liabilities from the assets, you have a net worth?
A. That's correct.
Q. Okay. So let's talk about what this particular June 30th, '02, balance sheet said about Mr. Jackson's assets and liabilities.
MR. MESEREAU: Your Honor, could we have the exhibit marked?
THE COURT: Yes.
MR. AUCHINCLOSS: Certainly.
MR. MESEREAU: We'll renew our objection based on the Court's ruling.
THE COURT: Yeah. The ruling that you're talking to me about is the ruling limiting the financial presentation.
MR. MESEREAU: Yes, Your Honor.
THE COURT: He's made an offer of proof in his written materials that is within the scope of what I anticipated him to do.
The problem and the reason I have blacked out the screen is that if you're relying on documents that are evidentiary in nature in your 8565

presentation, they first must be introduced into evidence. The witness wouldn't be allowed to put parts of a document in evidence that is not in evidence. So....

MR. AUCHINCLOSS: I would just say that this is offered as expert testimony. And expert testimony may be based upon inadmissible evidence that's not normally admissible. And these are the specific documents that he is basing his opinions on, including hearsay and a variety of other -- so typically the --

THE COURT: But usually -- all right. Go ahead. The foundation for the figures is what I was looking for.

MR. AUCHINCLOSS: All right.

THE COURT: The objection is overruled.

Q. BY MR. AUCHINCLOSS: All right. Going back to your consideration of this particular balance sheet, tell us what it said in terms of Mr. Jackson's assets versus liabilities at that particular date.

A. This showed that as of June 30th, 2002, there was $130,000,000 in assets, $415,000,000 in liabilities, and a negative net worth of $285,000,000.

Q. Okay. Now, as far as this balance sheet goes, does it mean that Mr. Jackson is, by virtue of that balance sheet, bankrupt? 8566

A. No, it doesn't.
Q. Why do you say that?
A. Because the balance sheet is prepared on what's called a cash basis, or an income tax basis. And that means that the assets are actually listed at their cost, not necessarily their fair market value. So those assets could have higher values, and they could have lower values. The liabilities could have higher values; they could have lower values. It's just a cash basis. In other words, what was paid for the assets. So, no, it does not mean that. You have to look at it more from a fair market value.
Q. So this does not mean Mr. Jackson has $285,000,000 more liabilities than assets at this time?
A. The statement shows that. However, you know, it's on a cash basis, which means if you want to get into the real world, you have to look at it more from a fair market value perspective.
Q. Okay. So as a beginning point to your investigation, would a balance sheet like that be a cause of any concern?
A. You certainly look at it and question as to why there's a negative $285,000,000 net worth. I mean, that's certainly a concern and a consideration. But it simply means that more investigation needs to take place. 8567

Q. Were there other documents that you were able to review to give you a better picture of Mr. Jackson's financial condition?
A. Yes. I mean, we weren't -- we asked for things such as bank statements and general ledgers, which is a group of transactions that gets accumulated to become the financial statements. We asked for those types of things. We were not given those. We have not seen those. However, we did see about four to five boxes of other documents that were principally correspondence between Mr. Jackson's financial advisors and some of his advisors and/or himself.
So where he actually had hired financial advisors to take care of his money and his assets and pay his bills, that correspondence was made available to us, or some of that. So we actually looked at those to try and get a better understanding of his financial condition during that period of time.
Q. And in a forensic investigation such as this, do you typically have all the documents you want?
A. No. You might have more than we had, but you don't typically get all the documents you want.
Q. Based upon what you were able to look at and consider in this case, were you able to form some opinions with regards to Mr. Jackson's financial 8568

condition leading up to February of 2003?
A. Yes, we were.
Q. Okay. I'd like you to take us through your opinions in this case that were based upon these documents.
MR. MESEREAU: Objection; foundation.
THE COURT: Overruled.
You may proceed.
MR. AUCHINCLOSS: All right.
Q. If you would, please tell us about the opinions you formed based upon your review of all the financial documents you've described that were in these boxes that you reviewed.
A. Based on the information we saw, Mr. Jackson's financial condition had been deteriorating up and leading into February 2003, evidenced principally by a significant amount of overexpenditure over what was being made. In other words, expenditures exceeded income.
Secondly, that the liabilities, the obligations side of things, the obligations and liabilities were increasing steadily and fairly significantly.
And lastly, there appears to be an ongoing cash crisis. You'll see a number of the memos that we looked at that talked about cash crisis. Not enough cash to pay bills, et cetera.
And then lastly, I believe that information, 8569

based on the documents that I've seen, was certainly known as of February of 2003.
Q. All right. Have you prepared a diagram of this particular slide, Mr. O'Bryan, that you brought with you?
A. I think there was a blow-up of that made, yes.
MR. AUCHINCLOSS: If I may approach, Your Honor. And I've shown this to counsel. And I'd like to just place it on the easel so Mr. O'Bryan can refer to it during his testimony.
MR. MESEREAU: Your Honor, we're going to object just to the comment on their seeking documents and their not finding them, to the extent it suggests that the defense didn't produce something, and move to strike.
THE COURT: I'll strike that comment.
MR. AUCHINCLOSS: All right.
THE COURT: Go ahead.
Q. BY MR. AUCHINCLOSS: Okay. I'd like you to --
THE COURT: Have you seen the chart that he --
MR. MESEREAU: Yes, I did. I did receive a copy, Your Honor.
Q. BY MR. AUCHINCLOSS: Okay. So let's talk about the first opinion that you've expressed about Mr. Jackson's financial condition deteriorating. 8570

If you could, tell us why you -- how you arrived at that particular conclusion.
A. Well, as I mentioned, it was principally the documents that we reviewed, and principally in this matter some of the correspondence received from Mr. Jackson's financial advisors to either him or his other advisors about his cash position.
Q. Okay. And referring to Slide No. 5, if you'd take us through that.
A. Yes. Through some of these correspondence, it's apparent that there was --
THE COURT: Just a moment. The jurors can't see.
JUROR NO. 8: Can't see.
MR. AUCHINCLOSS: Oh, I'm sorry. I'm sorry. My apologies.
If I may place this down in the well or -- let me just try and adjust it here.
No, that's not going to work.
Is that all right? Okay.
Q. All right. If you'd please --
A. We came to that conclusion based on reviewing a number of different documents. It seemed to point to the following three things fairly consistently: One, that there was approximately 20 to 30 million dollars per year overspending. In other words, spending over what was being made. That has a tendency -- going back to that balance 8571

sheet, if you're not increasing your assets, and you're not -- you don't have the income to support that kind of expenditure, your debt goes up. And when your debt goes up and your assets don't go up, back to the balance sheet, your net worth goes down. So that is a tendency to look at that talks about deteriorating financial condition, first and most importantly, an overspending of that nature and that number. And, two, then, a decreasing net worth. And that was caused by the third bullet point, which is the fact that the debt increased almost $70,000,000 between 1999 and 2003.

Q. All right. So let's talk about the first thing you mentioned, his overspending habits, then how you come to your conclusions based on that. First of all, you mention these primary assets, two main -- two music publishing catalogs?

A. Well, I believe that, based on my review of the balance sheet, there are really three main assets, certainly one of them being the MIJAC catalog, which is publishing rights to certain of Mr. Jackson's personal performances and songs. And second is a Sony/ATV catalog, which is a library of copyrighted songs and performances by both Sony and Mr. Jackson -- Jackson other than the MIJAC catalog. Those would be two main assets. And those are income-producing, because they produce royalties and create income to Mr. Jackson. 8572

The third main asset would also be Neverland, Neverland Ranch, which is a fairly substantial and significant asset.
Q. So what documents did you rely upon to come to the conclusion that he was overspending?
A. That was correspondence from his financial advisors.
Q. Okay. I'd like to start by going back to 1999 and then take us up to 2003 and '4.
In 1999, did you consider any correspondence from Mr. Jackson's financial advisors in your forensic investigation?
A. We did, yes.
Q. Did you recall a letter dated October 13th, 1999, from Holthouse?
A. Yes, it was Holthouse Kaitlyn & Von Tropp (sic), or something like that.
Q. Okay. Who is -- can you determine from the correspondence who is Holthouse Kaitlyn & Von Tropp (sic)?
A. That is a CPA firm in Los Angeles that appeared to be acting as Mr. Jackson's financial advisors, business managers. They literally paid the bills, they kept track of the assets. And they reported back to Mr. Jackson or his advisors as it relates to financial condition and status of bills, et cetera.
Q. So they were actually cutting the checks to 8573

the vendors and people that Mr. Jackson owes money to?
A. Apparently so, yes.
Q. Okay. Back to this '99 memo. Does it make any reference to unpaid bills?
A. It does, yes.
Q. All right. Let's look at the next slide.
MR. MESEREAU: Objection. Relevance; Court ruling.
THE COURT: Overruled.
Q. BY MR. AUCHINCLOSS: Specifically, what does it tell you about Mr. Jackson's unpaid bills?
A. It says that Holthouse was short approximately $780,000 to meet "our outstanding liabilities," meaning at that point in time there was -- they were short in cash $780,000 to pay outstanding invoices or obligations due by Mr. Jackson and/or his entities.
Q. In this letter does Holthouse offer any suggestions or concerns?
A. They do, yes.
Q. What do they say?
A. They go on to say --
MR. MESEREAU: Objection; hearsay.
MR. AUCHINCLOSS: It's relied upon for his opinion.
THE COURT: I'll sustain the objection to the hearsay. He's allowed to form his opinion on that 8574

type of material, but he isn't necessarily allowed to repeat it, the material he forms his opinion on.
MR. AUCHINCLOSS: Okay.
Q. All right. So they expressed concerns about Mr. Jackson's overspending?
A. That's correct.
MR. AUCHINCLOSS: Your Honor, am I permitted to continue the PowerPoint presentation?
THE COURT: Well, you can't show that material. You're quoting hearsay quotes from other people that have to have limiting instructions, and that's exactly what I asked you at the beginning, what the material was about. I wouldn't allow a witness to go to the blackboard and write down what someone else told him. You've got that in the PowerPoint presentation?
MR. AUCHINCLOSS: This is the specific statement that he relied upon to form his opinion, from the defendant's --
THE COURT: I understand that. He's given his opinion.
MR. AUCHINCLOSS: Okay.
Q. So looking at the records, going through the records, did Mr. Jackson appear to heed the concerns of the Holthouse accountants, of his Holthouse accountants?
A. No. The expenditure levels seemed to continue throughout 1999, as evidenced by comments 8575

made within the Holthouse memos.
Q. Okay.
MR. MESEREAU: Same objection. Excuse me.
I'm going to object to relevance; 1999.
MR. AUCHINCLOSS: I'll be happy to make an
offer of proof as to why we're starting here.
THE COURT: The objection is overruled.
Q. BY MR. AUCHINCLOSS: Is there an indication,
during this period, from Holthouse as to how much
Mr. Jackson is receiving in income versus how much
his expenditures are?
A. Yes. In one of the memos, it stated that
Mr. Jackson was receiving --
MR. MESEREAU: Objection; hearsay.
THE COURT: The problem we're having here --
I'm going to talk to the jury a second about this.
(To the jury) The expert is allowed to use
this type of material to form an opinion on. But
you, as a jury, are not allowed to accept that
material for the truth of the matter asserted. It
is hearsay, and it is only being presented to show
you what he relied on.
So with that limiting instruction, I will
allow him to state -- to answer your question.
MR. AUCHINCLOSS: Okay. Would you like the
question repeated?
THE WITNESS: No, I have the question in
mind. 8576

MR. AUCHINCLOSS: Okay.
THE WITNESS: In fact, in 1999, there was a memo, it was actually in 2000, which summarized the 1999 income statement, and basically said that there was approximately 11 --
MR. MESEREAU: Objection; hearsay.
THE COURT: Overruled.
Go ahead. With the same limitation.
THE WITNESS: Stated that there was approximately $11.5 million received on the MIJAC catalog and the Sony/ATV catalog; five million on the MIJAC, 6.5 million on the Sony catalog, for a total revenue of about $11.5 million, if my math's correct.
At the same point in time, there was expenditures of over $20 million, made up of approximately $5 million in legal and professional fees, $5 million in security and ranch expenditures, seven and a half million dollars in personal expenditures, and $2.5 million of other miscellaneous, which was principally insurance. So total income of 11.5 million and expenditures of over $20 million.
Q. BY MR. AUCHINCLOSS: All right. Now, you've mentioned previously this MIJAC catalog and the Sony/ATV catalog. Does it appear, based on these records that you have reviewed, that these are his two main assets? You mentioned Neverland, but are 8577

these the main assets over and above Neverland?
A. Well, those are the main income-producing assets. I mean, as I said, I think there's three main assets, the two catalogs and Neverland. But the MIJAC catalog and the Sony/ATV catalog are the two income-producing assets which generate royalties off of those copyrighted performances.
Q. What is a music publishing catalog?
A. It's really a library of copyrighted songs or performances which a manager or an administrator sells into the commercial market. Either they sell it by playing it on the radio, they sell it by allowing a movie to use the song, a T.V. show to use the song, advertisements to use the song, or they might sell sheet music.
Each and every time that song is played or those -- that sheet music is used, you get a royalty off of it. So that generates money, which is captured by a royalty capture device, and then that is sent to MIJAC catalogs for all of the MIJAC songs, which again principally were Mr. Jackson's personal compendium of performances, or for the Sony/ATV, which was that catalog. That generates revenue.
Q. Okay. Now, the MIJAC catalog consists of what?
A. As I mentioned, that was principally Mr. Jackson's personal compendium of copyrighted songs

and performances. That's what the MIJAC catalog is.
Q. And the Sony/ATV catalog?
A. The Sony/ATV was a joint venture or a partnership between Sony, who contributed a number of their copyrighted songs. I think it started out principally as country-western, and Mr. Jackson contributed his copyrighted performances of songs, other than MIJAC, which at the time there were a number of different performances, but some of them were The Beatles' hits.
Q. And is Mr. Jackson's interest in the Sony catalog a part interest?
A. Yes, it is.
MR. MESEREAU: Objection; foundation.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: Is Mr. Jackson the sole owner of the Sony catalog?
MR. MESEREAU: Objection; foundation.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: Do the records that you've reviewed indicate whether or not Mr. Jackson is the sole owner of the Sony catalog?
MR. MESEREAU: Objection; foundation.
THE COURT: Overruled.
You may answer that question.
THE WITNESS: Yes, the records indicate that Mr. Jackson is a part owner of that catalog with Sony as the other partner. 8579

Q. BY MR. AUCHINCLOSS: Okay. Now, you've given us a breakdown of the 20 million in expenses.
MR. MESEREAU: Objection; misstates the evidence.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: Did you give us a breakdown of the 20 million in expenses that -- for the '99 period in that March Holthouse letter?
A. I did, yes.
Q. Okay. Was there -- were there any additional liabilities over and above the $20 million, that Mr. Jackson accrued during the previous year based on that letter?
A. Yes, there were.
Q. What are we talking about?
A. It's about $11 million of interest expense on the two loans. There's two loans with B of A that are secured by -- one by the MIJAC catalog. The royalties in the MIJAC catalog are used as collateral against -- first it's a $15 million loan, and then a $20 million loan, and it continues to go up.
And then there's the -- the Sony/ATV catalog is used as collateral for approximately $140 million of loans from B of A. And those two loans in 1999 incurred about $11 million of expenditures -- excuse me, $11 million of interest that would be added to the 20 million to come up to a total expenditure. 8580

Q. Okay. So let me see if -- paraphrase and see if I have this right.
In 1999, before this letter was written, Mr. Jackson had $31 million in liabilities; is that correct, approximately?
A. $31 million of expenditures.
Q. I'm sorry, $31 million in expenditures?
A. That's correct.
Q. And he had $11.5 million in income?
A. That's the income coming off of the two catalogs, yes.
Q. So he's spending millions more than he's making?
A. The evidence shows that he's spending about $20 to $30 million more than he's making.
Q. Now, is that an annualized issue? Are you saying -- I mean, he's making 20 or 30 -- or spending 20 or 30 more than he's making per year?
A. That's correct.
Q. Is that what we're talking about?
A. That's annually, yes.
Q. Okay. So, you've mentioned some loans that he has accrued, some debts. Who was the lender in those loans?
A. Bank of America.
Q. Can you tell at this stage what types of loans those are?
A. Well, one is what's called a line of credit, 8581

which means you can borrow from zero to the total amount of the loan possible. And the other was just a set loan. Started at $140 million, and it's grown to $200 million.
Q. Okay. So we're still looking at the Holthouse memo of 2000. At that stage, what was that loan?
A. In 2000 --
Q. In March.
A. In March of 2000, I believe that loan was $24 million.
Q. Okay. And then was there -- were there any other loans at that point?
A. Well, there was the B of A loan for 140 million. There was the $24 million B of A loan on the MIJAC catalog. And there was an additional $26 million owed to Sony.
Q. Okay. And what is the Sony loan related to, if you could tell us?
A. It appeared to be some 1994 transaction where 26 million dollars was owed.
Q. So the previous Holthouse letter you talked about said that he had I think around $800,000 in accounts payable.
A. Okay.
Q. Is that right?
A. Well, it said that there was -- there was not cash available to pay approximately $800,000 of 8582

1 outstanding obligations.
2 Q. So those are bills that he has that he
3 didn't have the money to pay?
4 A. Correct.
5 Q. How does his outstanding obligations versus
6 cash -- look at the point where we're at now, at
7 the -- in March of 2000. Does the letter reflect
8 his ability to pay his obligations at that point?
9 A. As I recall, the memo from Holthouse said
10 that at that point in time --
11 MR. MESEREAU: Objection; hearsay.
12 THE COURT: Overruled.
13 You may answer, with the same limitation
14 that I instructed the jury on earlier.
15 Go ahead.
16 THE WITNESS: Approximately $3.5 million of
17 outstanding obligations as of that date in 2000.
18 Q. BY MR. AUCHINCLOSS: Does Holthouse express
19 any additional concerns about his assets, the
20 vitality of, or the risk that's being presented by
21 this overspending concerning his assets?
22 MR. MESEREAU: Objection. Leading and
23 hearsay.
24 THE COURT: Sustained.
25 Q. BY MR. AUCHINCLOSS: Are there any other
26 concerns that are expressed by Holthouse in this
27 memo?
28 MR. MESEREAU: Objection. Leading and 8583

hearsay.
THE COURT: Sustained. Calls for a
narrative.
Q. BY MR. AUCHINCLOSS: Okay. Does Holthouse
talk about any possible tax liabilities in this
letter?
MR. MESEREAU: Objection; hearsay.
THE COURT: Overruled.
You may answer.
THE WITNESS: They do, yes. What's talked
about is, they mention in the letter that if Mr.
Jackson and his entities continue to overspend by
$20 to $30 million a year, that the collateral for
those loans is the catalogs. That's what secures
the catalogs. Just like your car secures your car
loan, those catalogs secure those loans, or your
house secures your mortgage.
And their concern is that if that rate of
spending continues, that those catalogs could be in
jeopardy. In other words, he may have to sell
those, even if he could sell them. And if, in fact,
you sell those catalogs, there's a substantial tax
liability. So you not only have to pay the debt,
but you also have to pay the taxes on the sale of
those catalogs. And it talks about that issue and
that being a concern of Holthouse.
Q. BY MR. AUCHINCLOSS: Does Holthouse write an
additional letter expressing their concerns in June 8584

1 of 2000?
2 MR. MESEREAU: Objection. Hearsay; leading;
3 foundation.
4 THE COURT: Overruled.
5 You may answer.
6 THE WITNESS: They do, yes.
7 Q. BY MR. AUCHINCLOSS: And do they discuss the
8 issue of how much available cash or remaining debt
9 on these loans Mr. Jackson has to fund his current
10 obligations?
11 A. They do, yes.
12 Q. What do they say?
13 A. At that point in time, there was the $20
14 million line of credit that was basically --
15 Holthouse even says in the memo that it's really --
16 that line of credit and the other debt is funding
17 his living expenses.
18 And the memo goes on to say that at that
19 point in time, $9.2 million has been lent or drawn
20 on the line of credit. Meaning that there's only
21 another $800,000 available on that line to fund
22 living expenses for an indefinite period of time.
23 Q. Do they describe any spending restrictions
24 on Mr. Jackson that need to go into effect?
25 A. They do. Concerned over that cash situation
26 or that cash crisis, they immediately state that
27 they will no longer pay any bills unless authorized
28 by the client, and -- 8585

MR. MESEREAU: Objection. Hearsay;
foundation.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: All right. Moving on
to June 14th, just a few days later, did they send
another memorandum? Did Holthouse send another
letter to Mr. Jackson?
A. They did, yes.
Q. Do they talk about Mr. Jackson's rate of
spending specifically in that letter?
A. Um --
MR. MESEREAU: Objection. Hearsay;
foundation.
THE COURT: Overruled.
You may answer.
THE WITNESS: Yes, they do.
Q. BY MR. AUCHINCLOSS: What do they say?
A. They continue to act -- or they continue to
say they are concerned about Mr. Jackson's rate of
spending. And again, he is spending approximately
$20 to $30 million more than he's making per year.
Q. BY MR. AUCHINCLOSS: Did they specifically
say that?
A. Yes.
Q. What is Mr. Jackson's debt at this
particular juncture? Is it mentioned in these
documents?
MR. MESEREAU: Objection. Foundation and 8586

hearsay.
THE COURT: It's --
MR. AUCHINCLOSS: It's compound.
THE COURT: -- compound.
MR. AUCHINCLOSS: I'll go ahead and withdraw the question.
Q. Does -- do these documents that you've described so far say anything about Mr. Jackson's debt that he is now servicing at this point in time, on June 13th or June 14th of 2000?
A. They do, yes.
Q. What do they tell you about his debt at that point?
MR. MESEREAU: Objection; hearsay.
THE COURT: Overruled.
You may answer.
THE WITNESS: As I recall, they mention that the Bank of America debt is a $200,000 -- excuse me, $200 million, which is securing the ATV catalog. And as I recall, the line of credit is up to $35 million at that point in time.
Q. BY MR. AUCHINCLOSS: Okay. And do they talk about his ability to pay unpaid vendors or bills in that letter?
A. Yes. It goes on to state that Holthouse is unable to pay vendors; that vendors continue --
MR. MESEREAU: Objection; hearsay.
THE COURT: Overruled. 8587

Go ahead.
THE WITNESS: And that vendors are continuing to threaten alternative action if they are not paid.
Q. BY MR. AUCHINCLOSS: Does Holthouse warn Mr. Jackson of an impending problem?
MR. MESEREAU: Objection. Leading; hearsay.
THE COURT: Overruled.
THE WITNESS: Yes. It goes on to say, back when -- it said back three months earlier --
MR. MESEREAU: Objection; nonresponsive.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: Could you just confine your answer to any warnings that are given in the June 14th, 2000, Holthouse letter?
A. Yes. The warnings are that, again, that the catalogs are now at risk. And that's the MIJAC catalog and the Sony/ATV catalog, because again, they are securing those loans, and those loans continue to increase.
Q. Did you consider a memorandum from So Young Lee to Myung Ho Lee?
A. I did, yes.
Q. And who is Myung Ho Lee?
A. Apparently he was a financial advisor to Mr. Jackson.
Q. And the date of this letter was -- do you recall it? 8588

A. I think it was October of ‘00. ‘01, possibly.
Q. And in this letter, does Miss Lee forecast future spending for the period -- 16-month period of September 2000 through December 2001?
A. Yes, she does.
Q. How much spending is forecast?
MR. MESEREAU: Objection. Hearsay; foundation.
THE COURT: Overruled.
You may answer.
THE WITNESS: A little over $31 million for that 16-month period of time.
Q. BY MR. AUCHINCLOSS: So what does that equal on an annualized basis in terms of spending?
A. If my math is right, about $23, $24 million per year.
Q. All right. So has that been an increase from the previous documentation that you reviewed concerning Mr. Jackson’s expenditures when he was warned back in, I think it was, March of 2000?
A. Yes. The 1999 expenditures were $20 million, plus approximately $11 million of interest. The projection by Ms. Lee was $23 million for that year, and that did not include the $11 or $12 million of interest expense. So those expenditures are continuing to increase.
Q. Were you able to determine whether or not 8589

these forecasts were accurate as far as future spending?
A. No, we did not see those documents as to actual expenditures in 2001.
Q. Did you ultimately look at documents from 2004 that showed his level of debt during that period?
A. Yeah, we saw how the debt increased 2001 -- or 2000 through 2004.
Q. And was the increase in debt commensurate with these predictions of excessive spending by So Young Lee?
A. Yes. As I mentioned earlier, the debt increased approximately $70 million over a three-year period of time. And that would tend you to believe that it was about $20 to $30 million per year increase. The debt was increasing because the expenditures increased over the income levels.
Q. Did you consider a February 13th, 2003, memorandum from International Business Management?
A. I did, yes.
Q. And who is International Business Management?
A. They appear to be another financial consulting firm that was assisting Mr. Jackson and/or his advisors.
Q. Okay. Does this letter mention anything about Mr. Jackson’s rate of spending? 8590

A. It does.
Q. What does it say?
MR. MESEREAU: Objection; hearsay.
THE COURT: Overruled.
THE WITNESS: It says that they are concerned
about his excess spending habits, his continued
excess spending habits over his income.
Q. BY MR. AUCHINCLOSS: Do they cite any
specific figures?
A. I think it was $20 to $30 million again.
Q. Okay. Does that letter talk about how
many -- how much money is building up in the unpaid
vendors category?
A. It does, yes.
Q. What does it say?
MR. MESEREAU: Objection. Relevance; Court
ruling.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: Does it say how much
cash is left to pay these vendors?
MR. MESEREAU: Objection; Court ruling.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: Does it say anything
about the status of his current loan balances in
February of 2003?
MR. MESEREAU: Objection; hearsay.
THE COURT: Overruled.
You may answer. 8591

THE WITNESS: It does, yes.
Q. BY MR. AUCHINCLOSS: What is that?
A. At that point in time, it mentions that the MIJAC loans are approximately $70 million. And the B of A loan on the Sony/ATV catalog is approximately $200 million.
Q. Does it say whether or not he has any -- has sufficient cash to pay his bills?
MR. MESEREAU: Objection.
Q. BY MR. AUCHINCLOSS: In that month, February of 2003.
MR. MESEREAU: Leading; hearsay; foundation; Court ruling.
THE COURT: Overruled.
You may answer
THE WITNESS: Yes. It states that at that point in time there are $10.5 million of unpaid vendor invoices. And there's only $38,000 of cash in the bank.
Q. BY MR. AUCHINCLOSS: Okay. So if we can summarize what has happened to his debt since 1999, what was his debt with the Bank of America as of 2000?
A. Well, in 2000, the debt was approximately $155 million.
Q. And let's go now to February of 2003.
A. That debt has grown to $224 million.
Q. 70 $million in three years increase? 8592

A. That's correct.
Q. Have you reviewed loan documents, these loan documents for the two loans that you're -- or for the loans on these music catalogs that you've talked about?
A. I did, yes.
Q. Do they have any covenants or conditions?
A. They do, yes.
Q. Any covenants regarding accruing additional debt?
MR. MESEREAU: Objection. Foundation, hearsay, and leading.
THE COURT: Overruled.
You may answer.
THE WITNESS: Yes, there is a covenant.
Covenants -- well, there is a covenant that says that there's no additional debt allowed unless approved by Bank of America.
Q. BY MR. AUCHINCLOSS: Is there a covenant against -- any covenant regarding, I should say, further encumbering these two assets? In other words, getting more -- mortgaging them further with another agency?
A. Yes. There is also a covenant that says that Mr. Jackson and/or his businesses are not allowed to further encumber these two catalogs. In other words, the only loan that can be on these two catalogs is the two B of A loans. 8593

Q. So --
THE COURT: We'll take our break.
MR. MESEREAU: Your Honor, we have a motion to make.
THE COURT: Not now.
(Recess taken.)

(The following proceedings were held in open court outside the presence and hearing of the jury:)

THE BAILIFF: You can have a seat, Mr. O'Bryan.
THE COURT: The reason I've come in before we bring the jury in is that I want to make a ruling here that helps clarify what you're trying to do, both of you.
Initially I made an order that the District Attorney was permitted to bring in general financial information to provide evidence from which the jury may or may not infer that the defendant was -- had financial problems, from which they may or may not infer that that gives him some motive to commit the crimes the D.A. alleges he's committed.
The offer of proof that was made in the memorandum that you submitted, your trial memorandum, was within what I perceived.
The thing that I'm uncomfortable with, and 8594

have been for a few minutes, is the constant having your expert refer to, you know, letter after letter from his advisors about his financial condition. The expert has testified that he relied on the balance sheet and income expenditure statements, which is basically what you expect an expert to rely on. And to some extent certainly he would rely on other people's opinions, financial advisors of Mr. Jackson. But it's not the kind of evidence that I'm going to allow you to continue to bring up.
So you can -- my ruling is that his quotes from -- that he wants to make or you want him to put into evidence from Michael Jackson's advisors are to stop at this point.
I have advised them that those have limited value to them, since they can't accept those for the truth of the matter asserted, but I think if we continue in that vein, it's not the right way to present the evidence.
MR. AUCHINCLOSS: May I just tell the Court how I intend to finish up, just so we're --
THE COURT: They can't hear you.
MR. AUCHINCLOSS: May I just tell the Court how I intend to finish up?
THE COURT: You may.
MR. AUCHINCLOSS: Basically, just so you know, Your Honor, we wanted to do this with balance sheets. And as you know, we weren't -- 8595

THE COURT: I don't want to hear that. What do you want to tell me?
MR. AUCHINCLOSS: At the end of the -- we're at the end of his testimony. And we're going to finish with the two summaries that were provided by the Bank of America. Now, these are actual letters that were SDT'd from Bank of America to representatives. And just so you know, the testimony is book-ended by the statement, balance statement, and these letters.
THE COURT: Let me see the letters.
MR. AUCHINCLOSS: Okay. Well, I have a copy, but --
THE COURT: Have you seen the letters, Counsel?
MR. MESEREAU: I'm not sure what he's talking about.
MR. AUCHINCLOSS: This would be the Jane Heller letter and the Maiorella letter from the Bank of America indicating the status of the loan balances as of 2004.
THE WITNESS: I have them here, if you want.
MR. MESEREAU: May I take a look, Your Honor?
THE COURT: Well, after me.
MR. MESEREAU: Okay. Excuse me.
MR. AUCHINCLOSS: Jane Heller and Maiorella.
THE COURT: So these are the status of the 8596

loans in 2004?
MR. AUCHINCLOSS: Yes. And these provide conclusive evidence that everything that was predicted, everything that was stated by all of the letters that we have indicated, was borne out in the resulting accumulation of debt and of what the --
THE COURT: Yeah, but the issue isn't what his financial status is today or whether you were right or wrong.
MR. AUCHINCLOSS: I know, the issue is --
THE COURT: The issue is what was his frame of mind in 2000 -- late 2002 and 2003.
MR. AUCHINCLOSS: And that's what --
THE COURT: And not whether he was even right. He could have been absolutely wrong. So --
MR. AUCHINCLOSS: That's true.
THE COURT: So his financial statement today isn't at issue.
MR. AUCHINCLOSS: Well, I'm just saying that's why the letters are so important, because they impute knowledge of the defendant.
THE COURT: Today.
MR. AUCHINCLOSS: No, the ones that we've introduced so far. And this basically confirms that the letters were all correct, and that they also further show what was going on in 2003.
THE COURT: What they show is, in hindsight, he was in trouble. But that's not the issue. 8597

MR. AUCHINCLOSS: All right. So --
THE COURT: Did you look at the letters, Mr. Mesereau?
MR. MESEREAU: I've looked at them, Your Honor. And I would object based on what the Court just said. The point of their presentation is not to talk about --
THE COURT: They can't hear you.
MR. MESEREAU: I'm sorry, Your Honor. The point they're trying to prove is not what is his financial status today. They're allegedly trying to suggest there was a motive in 2003 to conspire to do criminal acts because of financial concerns, which of course we vigorously dispute.
But nevertheless, the issue is what is relevant to a possible motive in 2003, specifically between January and March. Nothing after that date would have any relevance to what they claim they're trying to prove.
MR. AUCHINCLOSS: Our point is that these letters tell what happened in 2003, tell what was going on at that time. Our --
THE COURT: I must have misread them. Do you want to give them back to me? I thought they were talking about right now.
MR. AUCHINCLOSS: Well, they're talking about how the debt has accumulated. 8598

THE COURT: They're talking about right now, aren't they?
MR. AUCHINCLOSS: Yes, they are.
THE COURT: All right. Give them back to him.
MR. AUCHINCLOSS: But it's the genesis of those problems that exist in 2003.
THE COURT: Do you understand what I'm saying, Counsel?
MR. AUCHINCLOSS: I do. I do.
THE COURT: Do you understand the limitations that I gave you on the financial material?
MR. AUCHINCLOSS: That it was to be concise --
THE COURT: I think now the limitation is this: That I don't want you asking him any more quotes from any of his advisors. You are apparently not going to do that.
MR. AUCHINCLOSS: All right.
THE COURT: And I don't think it's -- and I will rule that an opinion as to his present financial status would be improper.
MR. AUCHINCLOSS: Very good. I'll just finish up with his opinions about the defendant's financial status in 2003.
THE COURT: At that time. All right.
MR. AUCHINCLOSS: All right. Thank you.
THE COURT: Thank you.
You can bring in the jury. 8599

(The following proceedings were held in open court in the presence and hearing of the jury:)

THE COURT: Counsel?

MR. AUCHINCLOSS: Thank you, Your Honor.

Q. Mr. O'Bryan, where we left off, I was drawing your attention back to the summary of your opinions, and I'm going to ask you at this time, based upon your review of all the records in this case, including the records you've testified about, can you walk us through your opinions about Mr. Jackson's financial condition as of the February-March period of 2003? What are your opinions, sir?

A. Again, they are that Mr. Jackson's financial condition has deteriorated, up and leading to that point of time, February of 2003. The expenditures have exceeded income. The liabilities have increased. And there is a liquidity crisis or a cash crisis which looms and has been ongoing. And I believe those conditions were known as of February 2003.

MR. AUCHINCLOSS: All right. Thank you very much, Mr. O'Bryan.

THE COURT: Cross-examine?

MR. MESEREAU: Yes, please, Your Honor.

// 8600

CROSS-EXAMINATION
BY MR. MESEREAU:
Q. Good afternoon.
A. That it is. Good afternoon.
Q. My name is Thomas Mesereau and I speak for Mr. Jackson.
When you began your examination by the prosecutor for the government, you indicated there was some documents that you had wanted to see if you could, but they were not available to you, right?
A. That is correct.
Q. And what documents were they?
A. Those would be -- well, we'd like to see financial statements for 2000 -- for 1999, 2000, 2001, 2002, and all the way through February of 2003. In addition to that, general ledgers, which are the summation of transactions, which become financial statements. We asked for bank statements. Those types of detailed supporting documentation would be things that we would typically ask for, and we did. They were just simply not made available to us.
Q. Okay. They were not made available to you by the prosecutor who hired you, correct?
MR. AUCHINCLOSS: Objection; misstates the evidence.
THE COURT: Overruled.
You may answer. 8601

THE WITNESS: I was simply told that that information was not available to me.
Q. BY MR. MESEREAU: Well, you've never spoken to anyone on the defense side, correct?
A. I have not, no.
Q. The only people you spoke to about your opinions today are the prosecutors for the government, correct?
A. That's correct.
Q. And when did you first talk to any prosecutor for the government?
A. Oh, I think the first call came to me probably back in October-November.
Q. Okay. And who called you?
A. Oh, it was Mr. Auchincloss.
Q. Okay. And have you worked with Prosecutor Auchincloss ever since?
A. I have not, no.
Q. Okay. Who have you worked with to -- in the process of preparing to testify in this trial?
A. We've met with Mr. Auchincloss, and also a Ms. Linz, as I recall her name, Chris Linz. I met Mr. Sneddon, but we really didn't talk about my testimony, per se.
Q. Okay. Now, you've indicated you wished you could have looked at financial statements for 1999, 2000, 2001 and 2002; is that correct?
A. All the way up through February of 2003, 8602

actually.
Q. Okay. So in the process of forming your opinions, and I'm speaking about the opinions you've testified to today, you haven't looked at one certified financial statement of Mr. Jackson, true?
A. Well, we saw the June 30 -- there's a 1999 financial statement, and there's a June 30, 2002, financial statement.
Q. Okay. And who prepared those?
A. Prepared by Holthouse, as I recall.
Q. Okay. And are they certified, to your knowledge?
A. Yes, they are.
Q. Okay. And did you talk to anyone at Holthouse about what they used to prepare those statements?
A. No. You can see what they used to prepare the statements.
Q. Well, let me just -- you can see what they used to prepare those statements?
A. Yes.
Q. You can see every document they reviewed?
A. No, but you know, based on the opinion that they gave and the types of financial statements that they are.
Q. Okay. Okay. You didn't look at general ledgers, because they were not available, correct?
A. That's correct. 8603

Q. And please tell the jury what general ledgers would have -- well, first of all, before I get into that. The financial statements you did not look at, why would you like to have looked at those financial statements?
A. Because, as I mentioned in my direct, in doing a forensic accounting investigation, you want to see as much information as you possibly can. So that may lend additional information, it may not, but you certainly want to see as much as you possible can.
Q. And you said you would like to have looked at general ledgers, but could not, right?
A. That's correct.
Q. And why would you have preferred to have looked at general ledgers?
A. It's just more information. Understand that the general ledgers are nothing more than a process of accumulating a bunch of different transactions that then come to an end number that then become part of the balance sheet. So it just tells you the detail that makes up the final number. It's just more information.
Q. You didn't look at bank statements, correct?
A. We did not see any bank statements, no.
Q. And had you had any bank statements available, what benefit would you have had?
A. Well, it would tell you cash balances. It 8604

would tell you the expenditures, at least on a cash basis. You wouldn't know the detail. It would just be like looking at your normal bank statement, just shows the check and the account. So it would show you cash balances on an ongoing basis.
Q. And are you saying the documents you looked at did not identify for you exactly what the nature of the expenditures were?
A. No, there are documents within some of the Holthouse memos and some of the financial consultants that talk about individual expenditures and individual expenditure levels.
Q. Okay. You didn't look at any tax returns, correct?
A. No, we actually did, I think, see tax returns.
Q. Which ones; do you know?
A. I don't recall the years. Seems to me they were later years.
Q. Okay. You didn't see any during the period you're giving an opinion on, did you?
A. I think we may have seen '02, maybe '03.
Q. Okay. And are you sure about that?
A. I don't recall. There's not a lot of information that's pertinent to this analysis in a tax return.
Q. Okay. Were they corporate returns or personal; do you know? 8605

A. I believe they were personal.
Q. Okay. Now, you've indicated that you are with a financial consulting firm, correct?
A. That is correct.
Q. And would one of the areas of expertise in your firm be looking at someone's bare financial condition and giving them advice how to change their condition and improve it?
A. I'm not sure what you mean by "bare."
Q. Well, you've given the jury your opinions about Mr. Jackson's expenditures, liabilities and liquidity, correct?
A. That's correct.
Q. You were not here to tell the jury what all of his assets were worth during that particular time period, correct?
A. And we don't know exactly what they were worth during that particular time frame.
Q. Have you looked at any information in response to the prosecutor's questions that would have given you any indication what any of Mr. Jackson's assets were worth?
A. There were a number of different documents in those which we saw that talked about value over periods of time. For example, I think there was a value given for Neverland Ranch at some point in time. There was also an appraisal done on the MIJAC catalog at some point in time. And there was an 8606

appraisal done on the entire Sony/ATV catalog at some point in time. Those would be the major assets. And we did see valuation -- two valuations done by an appraiser, and then one I think was just a representation maybe made by IBM, as I recall.
Q. Now, the prosecutor talked to you about a letter from a company called International Business Management. Do you remember that?
A. I do, yes.
Q. That was in February of 2003, correct?
A. That's correct.
Q. And do you recall that in that letter from that firm the Sony/ATV catalog was estimated to be worth approximately one billion dollars?
A. I do, yes. That's the catalog in total, yes.
Q. And clearly if you were going to try and advise someone like Mr. Jackson, based on the information you've given the jury today, about how to restructure his affairs to not have the debt he had or to be more liquid, you would consider the possibility of selling assets, true?
A. I think that's a real possibility here, yes.
Q. And if, in fact, the value of one billion dollars that is found in the letter you refer to is true, clearly if you were advising Mr. Jackson how to solve any cash crisis, you would consider the possibility of liquidating that asset, true? 8607

A. No, because the value of the catalog is one billion dollars. Mr. Jackson's interest is not half of that billion dollars.
Q. Well, sir, he has an interest in that catalog, correct?
A. Yes. But it is not worth half of one billion dollars.
Q. He purchased the catalog in approximately 1986 for about $47 million, right?
A. I think that's right.
Q. He sold half of that interest in the catalog in approximately 1995 for 90 million, true?
A. I believe that's correct.
Q. And in 1999 -- excuse me, in 2003, you see an estimated value in this particular letter of one billion dollars, right?
A. That's correct.
Q. And that catalog contains ownership interests in all of The Beatles' music, true?
A. I don't know that it's all of The Beatles' music. I think it's some of The Beatles' music.
Q. Do you know whether or not it's all of it or not?
A. I don't know.
Q. Do you know any other recording artists whose copyrighted music is contained within that catalog?
A. Yeah, I saw a memo on that. I don't recall 8608

1 the specifics, but I saw there were others involved.
2 I think there were -- Sony's copyrighted music was
3 in there, which I think it initially was
4 country-western. But I think there were other
5 artists in there as well as The Beatles.
6 Q. Okay. Now, that catalog today has been
7 estimated to be worth a couple of billion dollars by
8 some, and even four to five by others. Are you
9 aware of that?
10 MR. AUCHINCLOSS: Objection; assumes facts.
11 THE WITNESS: I'm not aware of that, but
12 again --
13 THE COURT: That's overruled. The answer is
14 he's not aware of it. Next question.
15 Q. BY MR. MESEREAU: Your job was not to
16 appraise the value of the Sony/ATV catalog, correct?
17 A. No. We certainly considered the value in
18 coming to our opinions.
19 Q. Did you hire an appraiser to give you an
20 appraisal of the value of that catalog in the year
21 2003?
22 A. No.
23 Q. You never hired any appraiser to put a value
24 on that catalog at any time while you were working
25 for the government, correct?
26 A. No. I don't see the need to.
27 MR. AUCHINCLOSS: I'm going to object as
28 relevancy as to the entire catalog. What's relevant 8609

1 is only the defendant's portion of it.
2 BAILIFF CORTEZ: Your microphone, sir, is
3 off.
4 THE COURT: The objection is overruled. The
5 answer is in. Next question.
6 Q. BY MR. MESEREAU: Did you look at the
7 transactional documents that were drafted in the
8 mid-'90s, approximately 1995, whereby Mr. Jackson
9 sold a half interest in that catalog to Sony?
10 A. I see the Sony/ATV agreement. Is that the
11 document you're referring to?
12 Q. That and other documents that refer to that
13 transaction.
14 A. I see -- the Sony/ATV agreement is what I
15 saw.
16 Q. Okay. Your job was not to obtain all of the
17 documentation that pertained to Mr. Jackson's sale
18 of a half of his catalog to Sony, right?
19 A. Well, again, I would ask for any document
20 that's available. And I got the documents I got,
21 which was the Sony/ATV catalog document.
22 Q. Okay. And you're not aware of efforts,
23 through the last four or five years, by anybody to
24 try and purchase his interest, correct?
25 A. In the Sony/ATV?
26 Q. Yes.
27 A. Well, Mr. Jackson, I don't believe, is
28 allowed to sell any interest until 2005. 8610

Q. But there are efforts to purchase it. If you can get all parties to agree, you can sell your interest, can't you?
A. That's true. If he gets Sony's approval, he could sell his interest, based on the agreement.
Q. So are you aware of any efforts during the last four or five years by third parties to try and get Sony and Mr. Jackson together and purchase that catalog?
MR. AUCHINCLOSS: I'll object as to relevancy beyond 2003.
THE COURT: Sustained.
MR. AUCHINCLOSS: March.
Q. BY MR. MESEREAU: Let me rephrase. Are you aware of any efforts by third parties, between 1999 and the end of 2003, to get Sony and Mr. Jackson together and work out an arrangement where Mr. Jackson's interest is sold?
MR. AUCHINCLOSS: Same objection. End of 2003.
THE COURT: Sustained.
MR. MESEREAU: I'll rephrase it again.
Q. Are you aware of any efforts between the years 1999 and March of 2003 by any third party to get Mr. Jackson and Sony together so they could purchase Mr. Jackson's interest in that catalog?
A. No, I have not seen any document like that.
Q. Okay. Now, among the documents that you 8611

were handed by Prosecutor Auchincloss, was the only reference to a value of the Sony/ATV catalog the one billion dollars you just referred to?
A. No, there was two. The IBM memo said, I think, one billion dollars, and it's June -- excuse me, a February 13th, '03 memo. But again, that's the value of the catalog, not Mr. Jackson's interest.
And there was a second document that was actually an appraisal done by an appraisal firm in, I think it was 1999, for $991 million, I believe.
Q. Okay.
A. So there's two documents that I saw.
Q. Now, Prosecutor Auchincloss showed you documents from March of 2003 that were written to Mr. Jackson by an attorney named David LeGrand, correct?
MR. AUCHINCLOSS: Objection; misstates the evidence as to the date of the documents.
THE WITNESS: You'd have to refer me to that document. I'm sorry.
THE COURT: Just a moment.
THE WITNESS: I'm sorry.
THE COURT: Well, I guess the District Attorney is saying that's not the correct date. Do you have a document that's dated March of 2003?
MR. MESEREAU: Yes, I do.
Q. Did the prosecutor in the course of your 8612

work for him show you a document dated March 18th, 2003, to Mr. Jackson from a lawyer named David LeGrand?
A. I don't recall seeing that document.
Q. Okay. Might it refresh your recollection if I just show you the one I have?
A. Please.
MR. MESEREAU: May I approach, Your Honor?
THE COURT: Yes.
MR. AUCHINCLOSS: May I see what you've got?
THE WITNESS: I don't recall seeing this memo before.
Q. BY MR. MESEREAU: So you're saying the prosecutor didn't give you this document when he was preparing you?
A. No, I'm not suggesting that. It's just I have not seen that document.
Q. Okay. Well, how many documents did you look at in preparing to testify?
A. As I mentioned earlier, there was about six boxes, something like that, of documents.
Q. Okay. Do you recall seeing the name David LeGrand in the documents?
A. I do, yes. There's documents from IBM to David LeGrand.
Q. Do you recall that he was giving Mr. Jackson advice about how to handle his financial situation?
A. I do recall that, yes. 8613

Q. Do you recall him suggesting that if Mr. Jackson --
MR. AUCHINCLOSS: I'm going to object to counsel reading --
Q. BY MR. MESEREAU: -- sold his --
Your Honor, can I --
MR. AUCHINCLOSS: -- reading from the letter --
MR. MESEREAU: -- complete the question?
MR. AUCHINCLOSS: -- that he says he doesn't know about.
THE COURT: Sustained.
Q. BY MR. MESEREAU: If Mr. Jackson sold his interest in March of 1993 -- excuse me, March of 2003 in the Sony/ATV joint venture, okay?
A. Yes, I gotcha.
Q. That's assuming the parties got together and all agreed Mr. Jackson can sell his interest, all right?
A. That's what I believe would have to happen, yes.
Q. Yes. He could have paid off the Bank of America loan, he could have ended up worth $200 million after taxes, excluding royalty income, true?
A. I've never seen that document, so I can't tell you that's true or not.
Q. Okay. But you were given some documents by the prosecutor that Mr. Jackson had gotten from his 8614

lawyer, Mr. LeGrand, true?
A. Yes, we were.
Q. And you saw some documents that said “Hale Lane” on them, correct, the law firm the lawyer belonged to, right?
A. We’ve seen those documents, yes.
Q. Okay. And you don’t recall a document dated March 18th where Mr. LeGrand told him how to solve his liquidity problem and be worth $200 million before he got a royalty?
MR. AUCHINCLOSS: Objection. Assumes facts; argumentative.
THE COURT: The objection is sustained.
Q. BY MR. MESEREAU: Did you ever ask Prosecutor Auchincloss if he had any documents available to him where any of Mr. Jackson’s advisors gave him advice on how to solve his liquidity problem?
A. Well, we asked for any and all documents relevant, so if I didn’t know that document exists, whatever that document is, I wouldn’t have known to ask for it. So we simply asked for any and all documents relevant to financial condition issues through February of 2003.
Q. Okay. Did you ask for documents through March of 2003 from Prosecutor Auchincloss?
A. We asked for documents all the way through today -- 8615

Q. Okay.
A. -- with respect to bank statements and the like.
Q. But you have never seen any document that suggested Mr. Jackson sell that asset and analyzes what he'll be worth if he sells his interest, right?
A. No. I've never seen that document, no.
Q. Okay. Now, none of your calculations consider any opportunities Mr. Jackson had in the entertainment industry during those years, correct?
A. That's -- well, I mean, it doesn't consider from an income perspective.
Actually, that's not true. It does consider, because the financial consultants -- the letters that the financial consultants wrote that I have looked at and relied on would assumingly take that into account. They're his business advisors and they're talking about the excess expenditures. So my guess is -- not a guess. I would assume they would include all items of revenue with respect to a calculation.
Q. Mr. O'Bryan, an entertainer like Mr. Jackson doesn't just go to his CPA every time someone offers him an opportunity around the world, right?
A. I don't know what his relationship with his business manager was.
Q. Well, did you know that he was offered $100 million to do a national tour in 2002? 8616

MR. AUCHINCLOSS: Objection; assumes facts.
THE COURT: Sustained.
Q. BY MR. MESEREAU: Are you an expert on the music industry?
A. No, I'm not.
Q. Have you done any kind of an analysis on what opportunities in the entertainment industry Mr. Jackson had between the years 1999 and March of 2003?
A. I did not, no. I relied on the financial consultants' information.
Q. Now, based on what you have seen to date, Mr. Jackson has never gone bankrupt ever, has he?
A. Not to my knowledge.
Q. Do you have any knowledge of what Mr. Jackson was offered to do either national or international music tours between the years 1999 and March of 2003?
A. No.
Q. Did the prosecutor give you any documents about licensing opportunities for various Michael-Jackson-related products that he was offered between the years 1999 and March of 2003?
A. I don't recall seeing any of those. There could be some in there, but I don't know that would be relevant to my calculations.
Q. If you were trying to solve a liquidity crisis like you've identified here, wouldn't it be

relevant if you knew that Mr. Jackson could accept one opportunity and solve it in a day?
A. Well, it could be relevant, but it isn't in this calculation, because that liquidity crisis was real. There were documents -- there are documents throughout that we reviewed that there was a serious cash crisis. And if it could have been solved, why wasn't it? I mean, there were documents that there's $10 million being unpaid. There's documents where vendors are threatening lawsuits. If it's that easy to fix, why don't you fix it?
Q. If it was as bad as you said it was, why didn't he go bankrupt?
A. Because I think he's been able to continue to borrow.
Q. Do you know that for a fact?
A. Yes. The debt's gone up.
Q. Do you know what opportunities he had to market Michael Jackson video games, market Michael Jackson fragrances, Michael Jackson music, Michael Jackson concerts, Michael Jackson tours during that period? Do you know what cash opportunities were available to him if he wanted them?
A. I have no doubt that there were substantial opportunities. The issue becomes why weren't they availed themselves? Why didn't they do that? There was a serious cash crisis. There's no doubt about that, based on the documents I've seen. And in 8618

fact, if it was so easy to do, why wasn't it done?
Q. Maybe it wasn't as serious as you've identified.
MR. AUCHINCLOSS: Objection; argumentative.
THE COURT: Sustained.
The jury's admonished to disregard Mr. Mesereau's remark.
Q. BY MR. MESEREAU: Did your firm ever do any independent due diligence investigation of Mr. Jackson's finances during that period?
A. No. No. Like, for example, searching the Internet or something like that? I mean, we asked for documents.
Q. Yes.
A. And we got the documents we got. I'm not sure -- independent investigation. Do you mean by going to the Internet or something like that?
Q. If your firm had been theoretically retained by Mr. Jackson to do an analysis of his assets and liabilities, to analyze any cash liquidity problem and to make recommendations how to solve it, what would you have wanted to look at?
A. We would have wanted to look at the documents we requested, which were all the bank statements, all the general ledgers, all of the income statements and balance sheets and financial statements for the individual years, plus the documents that we've seen, which is the opinions 8619

and/or the correspondence from all of his advisors as they progressed through serving him and helping him with his cash crisis.
Q. Okay. And I think it goes without saying, you didn't get all those documents to look at, correct?
A. As I mentioned, we didn't get all the financial statements and all the documents that we talked about, no.
Q. Now, you asked for documents up to the present; is that correct?
A. As I recall, we did, yes.
Q. Did Prosecutor Auchincloss give you documents that concerned March of 2003?
A. We -- we didn't -- apparently we didn't see some documents. In fact, I'm sure we didn't see all the documents, but we got what we got and those documents appeared to go through mostly 2003.
Q. Okay. Now, did you see current appraisals of all assets you believe Mr. Jackson owned when you did your analysis?
A. No. No, the -- as I said, the only two appraisal documents we saw was an official one in 1999, and then the IBM document, which was again a valuation of the venture, not just Mr. Jackson's interest.
Q. Now, based on what documents you saw, clearly the Sony/ATV music catalog was an 8620

appreciating asset, right?
A. It was an appreciating asset for the catalog. I'm not sure it was an appreciating asset for Mr. Jackson's interest because of the way it was structured.
Q. Okay. But, sir, again, if three parties, Sony, Mr. Jackson and a potential purchaser, get together, and there is an effort to buy that catalog from Sony and Mr. Jackson, terms are negotiated, and almost anything can be liquid at that point, true?
A. I'm sorry, "anything can be liquid." Do you mean --
Q. Sony and Mr. Jackson were certainly, based on what you know, capable of getting together and jointly selling their interests in that catalog to a third party, right?
A. That's my understanding; that either party could sell with the approval of the other.
Q. Okay.
A. Up until December 2005.
Q. And you knew that that catalog had originally been completely owned by Mr. Jackson, right?
A. That's correct. Well, he owned a portion of it. The catalog became total once Sony put their interests in as well.
Q. Well, when Mr. Jackson initially obtained an interest in the catalog, he had a complete interest, 8621

1 did he not?
2 A. He had the interest in his copyrighted
3 assets. Sony had their interest in their
4 copyrighted assets.
5 Q. I'm talking about in 1986 when he purchased
6 it.
7 A. He had apparently 100 percent interest.
8 Q. Okay. And you knew he had paid
9 approximately 47 million for his interest, right?
10 A. I think that's right.
11 Q. He had sold half of that interest
12 approximately ten years later for 90 million, right?
13 MR. AUCHINCLOSS: Objection; asked and
14 answered.
15 THE COURT: Sustained.
16 Q. BY MR. MESEREAU: And in 2003, it was your
17 understanding that the entire catalog was worth --
18 at least the only estimate you saw was a billion,
19 right?
20 MR. AUCHINCLOSS: Objection; asked and
21 answered.
22 THE COURT: Sustained.
23 Q. BY MR. MESEREAU: Now, let me ask you this,
24 because you do advise businesses on how to
25 restructure --
26 A. I do.
27 Q. -- and improve liquidity, correct?
28 A. We do, yes. 8622

Q. Okay. Given the rate of appreciation of that asset, based on what you know, between 1986 and 2003, can you envision a situation where Mr. Jackson says to himself, “I’ll deal with the liquidity crisis each year, because it’s a price worth paying to hang on to this asset the way it’s increasing in value”?
A. I don’t know what Mr. Jackson may have said to himself. But from a financial perspective, I would simply disagree with you that his interest is necessarily increasing each year given the financial structure of the arrangement.
Q. But the asset could be appreciating in terms of inherent value, true?
A. Depends on what royalties, in fact, it’s generating.
Q. Do you know?
A. Actually, yes, the royalties were increasing. But again, that’s the catalog in total. That’s not necessarily Mr. Jackson’s interest in that catalog.
Q. Well, let me ask you this: Had you seen the letter of March 18th -- excuse me, March 19th that I just showed you from Mr. LeGrand - okay? - where his lawyer advises him, “You can sell your interest, and you can end up worth $200 million after taxes” --
MR. AUCHINCLOSS: Objection. This was -- this was -- the objection was sustained previously. 8623

Hearsay.
MR. MESEREAU: I haven't finished the question, Your Honor.
THE COURT: I'll sustain the objection, though. I know it is the same question.
MR. AUCHINCLOSS: Motion to strike.
Q. BY MR. MESEREAU: If you'd known that asset could be sold in March of 2003 - okay? - if you knew that Mr. Jackson could have been worth 200 million after taxes by doing it, excluding royalty income, let's assume those facts just for the sake of argument, all right?
A. Okay.
Q. If you knew that, you wouldn't consider this liquidity crisis to be as serious as you've made it, true?
A. Well, the liquidity crisis was ongoing. There's -- in my mind, there's no doubt about it, in 1999, 2000, 2001, 2002, and as of February 13th, 2003. In my mind there's no question about that. If, hypothetically, Mr. Jackson could have sold his interest, Sony would have agreed, and it would have created a net cash to him of $200 million, of course liquidity issues would change subsequent to February 13th, 2003.
Q. Okay. I'm not talking about net cash. I'm talking about when all the dust settles and all the loans are paid, and Bank of America is out of the 8624

1 equation, he ends up worth $200 million free of all
2 debt. If you knew he could have achieved that in
3 March of 2003, would that change your opinion about
4 the seriousness of this liquidity crisis?
5 A. As I was saying --
6 MR. AUCHINCLOSS: I'll object as to assumes
7 facts. Argumentative. And requires speculation.
8 MR. MESEREAU: It's just using a
9 hypothetical, Your Honor.
10 THE COURT: I'll allow the question as a
11 hypothetical.
12 (To the jury) I've already given you some
13 instruction on hypothetical questions. Do you
14 remember that instruction? Vaguely. Okay. I'll
15 give it to you after a while.
16 Go ahead. You may answer.
17 THE WITNESS: As I mentioned, it would not
18 change my opinion about his liquidity of the cash
19 crisis up through 2-13-03. However, if that was
20 known at that point in time, and at the end of the
21 day there would be $200 million of net worth in your
22 hypothetical, clearly that would change a liquidity
23 issue at that point in time.
24 Q. BY MR. MESEREAU: And certainly if Mr.
25 Jackson had received a letter from his attorney in
26 March of 2003 stating an assumption like that, that
27 would likely have changed Mr. Jackson's view of his
28 financial situation, right? 8625

MR. AUCHINCLOSS: Objection. Improper hypothetical; argumentative.
THE COURT: Sustained.
Q. BY MR. MESEREAU: Now, typically, if you were going to advise Mr. Jackson on how to handle a liquidity crisis, once you identified a liquidity crisis like you have today, logically wouldn't you sit down with the client and say, "What opportunities are available to you, sir, to raise millions of dollars and help solve your short-term needs?" That would be one of the questions you'd ask, right?
A. Certainly.
Q. And given what you know about Mr. Jackson and the success he's had in the music business and his reputation he's had around the world, logically wouldn't one of the first questions be, "Mr. Jackson, what are the opportunities available for you around the world right now to raise millions of dollars and help solve the crisis?"
A. Would that be a question an advisor would ask? Is that your --
Q. Wouldn't that be a logical question if you were consulting -- or someone like Mr. Jackson was consulting you?
A. Certainly. Clearly cash needed to be raised, and that would be a question one would ask.
Q. Okay. Now, have you, in your work, advised 8626

people in the entertainment industry --
A. No.
Q. -- of how to restructure their affairs?
A. No, I have not.
Q. You've never done it once?
A. Never once.
Q. Well, certainly in the course of your career, you've heard from time to time about various celebrities in the entertainment industry who, for whatever reason, end up with a cash crisis, true?
A. Yes.
Q. One of the reasons is sometimes work is sporadic depending on what work you do, correct?
MR. AUCHINCLOSS: Objection. Argumentative; irrelevant.
THE COURT: Sustained.
Q. BY MR. MESEREAU: Do you recall generally what documents you looked at when you were preparing your conclusions in this case?
A. Yes. As I mentioned, we saw -- it was five to six boxes. There was a couple of boxes of UCC filing statements. There was also a couple of boxes of Warner-Schappel royalty statements. And I think the remaining two boxes were miscellaneous financial documents, including correspondence from Mr. Jackson's financial advisors. And the balance sheet that I mentioned to you, as well, for 1999 and 2002.
Q. With respect to the expenditures that you've 8627

identified as exceeding income during those years - okay? --
A. Yes.
Q. -- am I correct in assuming that you saw some general information about how much was being spent?
A. Yes.
Q. As opposed to what the individual expenditures were for; is that correct?
A. We saw some specifics.
Q. Okay.
A. And some summaries that the consultants included.
Q. Okay. Okay. Did you see any year-by-year breakdowns about what Mr. Jackson was supposedly spending this money on?
A. Well, we showed you 1999, which summarized it by four or five different categories. There was some information in 2000. There was not -- I don't recall any information in '01 or '02. So we saw some details, but principally we saw the summarized memos of his financial consultants.
Q. Okay. Now, you mentioned the one-billion-dollar figure you saw attributed to the Sony/ATV catalog, correct?
A. That's correct, in the IBM memo.
Q. And there was a second catalog as well that 8628

you became aware of, correct?
A. That's correct, the MIJAC catalog.
Q. And that was a catalog devoted to Mr.
Jackson's own music, right?
A. That is correct.
Q. Did you see any appraisals on what the value
of that catalog was?
A. Yes. There was one done in 1999.
Q. And what was the value placed on that
catalog based on the appraisal you looked at?
A. $128 million.
Q. And do you recall who did that appraisal?
A. It was the same firm that did the Sony/ATV
catalog appraisal. I don't remember the name of the
firm. It was a Los-Angeles-based firm.
Q. And I believe you testified that as part of
your analysis, you considered what the Michael
Jackson catalog was generating each year in terms of
revenue, right?
A. Absolutely, yes.
Q. Just like you took into consideration what
the Sony/ATV catalog was generating in terms of
revenue, right?
A. Right.
Q. You didn't do any analysis of whether or
not, between the years 1999 and March of 2003, the
Michael Jackson catalog could have been sold,
correct? 8629

A. Well, I think that the Michael Jackson catalog could have been sold at any point in time. I'm not aware of any restrictions similar to the ones on the Sony/ATV catalogs. My assumption is that could be sold at any time.
Q. Okay. And if it had been sold in 1999, based upon the document you looked at, the best value you could ever come up with would be 128 million right?
A. 128 million would be the value of the catalog, less, of course, any debt, taxes, et cetera.
Q. Right. Now, in 1999 -- actually, excuse me. Let me just rephrase that.
You're not aware of any efforts to sell the Michael Jackson catalog, correct?
A. I've never seen any documentation like that, no.
Q. Okay. And I believe you testified that, from what you could see, the three main hard assets were the two catalogs and Neverland, right?
A. Those are the three main assets, yes.
Q. Okay. And clearly, you didn't consider any analysis of what entertainment opportunities were ever available for Mr. Jackson during 1999 to March of 2003, right?
A. No, I did consider those, in that it doesn't matter if those opportunities were available. There 8630

was a serious cash crisis. That's a fact. That's what the documents support. Also, whether or not that could have happened, it didn't, and therefore there was a cash crisis. That's what the documents show.

Q. And if you knew you could solve your cash crisis tomorrow by selling a portion of an asset and accepting an opportunity to tour around the world, that would make a difference in terms of the severity of that crisis, correct?

MR. AUCHINCLOSS: Objection. Requires speculation, assumes facts, and asked and answered.

THE COURT: Sustained. Assumes facts.

Q. BY MR. MESEREAU: As you sit here today, you know that he's never gone bankrupt and he's continued to live at Neverland, correct?

MR. AUCHINCLOSS: Objection; asked and answered.

THE COURT: Sustained.

Q. BY MR. MESEREAU: Now, let me ask you the following: Let's assume that your conclusions are correct. In February of 2003, let's assume that your conclusions about Mr. Jackson's financial crisis are true. Okay?

A. Okay.

Q. As of February of 2003, how much was he in debt?

A. Well, the -- the Sony B of A loan had a 8631

balance of $200 million. The MIJAC loan had a balance of $24 million. There was apparently an additional ten and a half million dollars owing to vendors that had not been paid.
Q. Okay. Now --
A. Those are the large liabilities that I can think of as I sit here right now.
Q. Let's assume that's all correct, all right? And let's assume he doesn't want to sell his interest in the Sony/ATV catalog. Let's assume he doesn't want to sell his own catalog, which was estimated to be worth $128 million in 1999, okay? Let's assume he decides to sit there and just keep living with this, these obligations that you've identified, all right?
A. Okay.
Q. Now, let's assume he has an opportunity to make a documentary for television that can generate about $7 million, all right?
A. Okay.
Q. Let's assume FOX is doing what is called a rebuttal documentary, okay? That $7 million isn't going to make much of a difference, is it?
A. No, it's not.
Q. Wouldn't be worth committing a crime over $7 million in that situation, would it?
MR. AUCHINCLOSS: Objection; argumentative.
THE COURT: Sustained. 8632

Q. BY MR. MESEREAU: Now, I believe you testified that on June 30th, 2002, he was not bankrupt, right?
A. June 30th, 2002?
Q. Yes. I wrote down some notes, and if I misstated that, let me know. But did you say that?
A. Oh, I'm sorry. Based on the financial statements --
Q. Yes.
A. -- I think Mr. Auchincloss asked, by definition of a negative net worth, does that mean he's bankrupt, and I said no.
Q. Okay. And could you please explain why you felt a negative net worth did not mean you're bankrupt?
A. As I mentioned, that financial statement, those assets were listed in what they call a tax basis, or cash basis, which means it's the cost. So that's the cost of acquiring those assets whenever they were acquired. And liabilities are, in fact, the stated amount of the liability.
We all know, for example, if you buy a house for 100,000, two years later it might be worth 150,000. So if that's, in fact, the case, the 100,000 asset is lower on the balance sheet than it is the fair market value. And that's the reason that you cannot draw that inference from that information, because that's stated at cost, not 8633

1 necessarily fair market value.
2 Q. You were referring, in response to the
3 prosecutor's questions, to a document dealing
4 with -- I gather it was a financial statement from
5 June 30th, 2002; is that correct?
6 A. That is correct.
7 Q. Okay. Now, if you were trying to determine
8 fair market value of Mr. Jackson's assets based on
9 that document, what would you have to do?
10 A. You'd have to go through each one of the
11 assets and figure out what the fair market value
12 was.
13 Q. And how would you do that?
14 A. You'd have to perform an appraisal on the
15 largest of the assets; namely, the catalogs, and
16 Neverland Ranch and all of the furnishings and
17 fixtures and artwork within Neverland Ranch. And
18 then you'd have to go through the liabilities' side
19 and understand what the total liabilities were,
20 adjusted for taxes, because assuming you have to
21 sell all those assets, there's going to be taxes
22 related to that. So that's how you go about it.
23 Q. Did Prosecutor Auchincloss ever ask you to
24 get an appraisal done of anything?
25 A. No.
26 Q. Did Prosecutor Auchincloss ever ask you to
27 do a fair market value analysis of anything owned by
28 Mr. Jackson? 8634

A. No. But as part of the work that we were performing, we did look at and consider the value of the MIJAC catalog and the Sony/ATV, Mr. Jackson's interest in that.
Q. But you didn't actually have it appraised by someone capable of appraising its value, true?
A. There was no appraisal done, no.
Q. Okay. And you would agree that to put a value on something like the Sony/ATV catalog would require fairly unique expertise, would it not?
A. Not necessarily, no. I mean, it's -- valuations -- both these valuations are simply based on cash flows. And the cash flows of that entity are then projected out into the future, and then they're discounted back. That's a common valuation technique. I've done it dozens of times.
Q. But they're also based on whether or not you think the hard asset is appreciating, correct?
A. No, it's not appreciating, because the appraisal tells you whether or not it's appreciating. It's simply based on assumptions with respect to the cash flow stream.
The value of those copyrights are nothing more than the cash flow going forward. That's what someone would pay for them. And so you have to make an assumption about how they'll grow, but then they simply apply a multiplier and they discount it back to today's dollars using a discount rate. 8635

1 And so it's a rather -- I'm not going to say
2 it's simple, but it's a rather common valuation
3 technique that we use in our business.
4 Q. And if it's so common to do, why wasn't it
5 done in your analysis?
6 A. Well, as I said, I did consider the MIJAC
7 valuation as of 2003 and the Sony/ATV valuation of
8 2003. I did consider that.
9 Q. You did no analysis regarding what the
10 marketability of his interests were in either of
11 those assets during that point in time, and if he
12 were to market those assets, what his condition
13 would have been afterwards, correct?
14 A. No, that's not true. No, I did. I
15 considered that.
16 Q. Well, I just showed you a letter from March
17 2003 where his lawyer actually does that, and you
18 said you didn't do any analysis like that, right?
19 A. No, I said I didn't see the letter, and I
20 didn't do a formal appraisal.
21 Q. Okay.
22 A. But I certainly took a look at what I
23 believed the values to be of those assets. Not the
24 whole catalog, because you can't value the whole
25 catalog. It's just Mr. Jackson's interest. But I
26 certainly considered the value of the MIJAC catalog
27 and the Sony/ATV catalog as of February of 2003.
28 Q. But correct me if I'm wrong, you said you 8636

don’t know how marketable that interest was, either individually or jointly with Sony at that time, right?
A. No, I think what I said was Sony would have to approve any sale. How marketable it is, I don’t know.
Q. Okay. Did you ever do any analysis as to whether or not Mr. Jackson’s assets were appreciating in value between 1999 and February of 2003?
A. I believe that the catalogs were actually -- that Mr. Jackson’s interest in both MIJAC and Sony/ATV were depreciating. The Neverland Ranch I’ve just always assumed at the value that was put in, I think in 1999, by one of his advisors.
Q. Sir, if Mr. Jackson’s interest in the Sony/ATV catalog went from 47 million in 1986 to selling half of it for 90 million in 1995, and then was estimated -- the entire catalog was estimated at a billion in 2003, based on the document you saw, how can you say it’s diminishing in value?
A. Because when you look at the way the money gets disbursed to the partners on the sale, and you look at how much money has been advanced to Mr. Jackson over the years, he gets six and a half million dollars guaranteed every year on that. While that’s going on, Sony should be getting six and a half million, and they’re not. So that means 8637

that they are, in fact, accruing a liability on an annual basis.
In addition to that, Sony is making substantial investments in additional copyrights expenses which Mr. Jackson is not contributing to, so that liability increases.
So I literally cash-flowed a model out and looked at when anybody could expect to get cash out of the Sony/ATV catalog, and it's like out into 2015 that someone would get that value, cash flows. When you discount that back to today's dollars, it's not as much as you think.
Q. Does anything happen in the year 2006 regarding liquidity of that catalog, to your knowledge?
A. Well, there's a "put" option that happens in December of 2005, which Mr. Jackson could sell for $200 million to Sony.
Q. What else is available?
A. I don't recall. I think at some point in time it can be sold. But again, the interest is -- what the cash flow values are, and when you look at the actual cash flows that will result off that interest, there's been a substantial amount of pre-drawing, if you will, of disbursements.
Q. But you saw documents that indicated what Sony's making on the catalog.
A. Well, you see a financial statement that 8638

shows what the entire partnership is making.
Q. Okay. So what you're saying is, based upon the obligations Mr. Jackson's assumed, you think value has been lost with each year; is that correct?
A. I do, yes.
Q. Okay. But you're not taking into account the value of the music around the world and what markets might be available for that music, true?
A. No, I am. I'm taking into account the cash flows that the partnership's generating.
Q. Okay. All right. Now, you indicated -- by the way, did you look to see whether Neverland has increased in value?
A. I didn't, no. I think at some point in time there was a value, and I just assumed that value.
Q. And what year did the -- excuse me, what year was there a value that you assumed?
A. I thought there was a number in there. I think it was sometime in the 2000 range. About $50 million.
MR. MESEREAU: Okay. If I may take just one second, Your Honor.
THE COURT: You may.
MR. MESEREAU: Thank you.
Q. As far as his expenditures go, you don't know, generally speaking, who he's spending money on, do you?
A. No. There is some detail in the records, 8639

yes.
Q. How much detail would you say?
A. As I mentioned, in the 1999 memo it shows the expenditures for the Neverland Ranch and security, it shows for professional and legal, it shows for personal, it shows for other, so there are details in there. There's a listing of all the employees that work at Neverland Ranch. There is detail at times.
Q. Do you think that detail accounts for all of the expenditures you've identified today?
A. Well, I think -- I think that the work done by Mr. Jackson's financial consultants would take into account all the expenditures. I don't know why they would have a reason to misstate those expenditures.
Q. No, I don't mean the amount. I mean the actual whatever -- whatever the money was actually spent on. Did you get detail to that effect?
A. As I mentioned, for 1999 we have detail.
Q. Okay.
A. And there are -- there is other detail. But Holthouse was the ones writing the checks. They would know where all the money went.
Q. Excuse me?
A. Holthouse was writing the checks. They would know where that money went.
Q. Did you see a detailed accounting of where 8640

every dollar was spent?
A. No.
MR. MESEREAU: Okay. No further questions.
THE COURT: Counsel?

REDIRECT EXAMINATION
BY MR. AUCHINCLOSS:
Q. Mr. O'Bryan, you mentioned that you did an analysis of Mr. Jackson's interest in the Sony/ATV catalog, as well as an analysis of the value of the MIJAC catalog in coming to the conclusions that you've stated to the jury today; is that correct?
A. I did consider those values, yes.
Q. And you've also stated that you arrived at those values based on a cash flow analysis?
A. That's correct. That's how you value that investment.
Q. What do you mean by a cash flow analysis?
A. The cash that actually is paid to someone over a period of time. That's the cash flow.
Q. Okay.
A. How that cash flows to you and what you're willing to pay for that investment is how much cash you will get in the cash flow that you get out of it. That's a common valuation methodology.
Q. So those catalogs are only worth their -- you arrive at your value based on what kind of income streams they produce? 8641

A. Right.
Q. Okay. So tell us about your analysis of the MIJAC catalog. What were your findings or what were your conclusions about the value of the MIJAC catalog based upon your cash flow analysis in this case?
A. Well, the MIJAC catalog, I believe, has gone down in value from 1999. The revenues, the royalties stream has gone down by almost 30 percent from the 1997, '98, '99 time frame, into '00, '01, '02, '03. And by virtue of the fact that the cash flow stream goes down, the value goes down. That's just the way -- it's the way the model works. You simply multiply the revenue stream times the multiplier. So if, in fact, the revenue stream goes down, the value goes down, and that makes sense. So that's gone down.
Q. Okay.
A. And on the Sony/ATV, it was exactly as I described, and that is that the amount of money which Mr. Jackson and/or his entities have been taking out on an annual basis and/or not paying into the partnership on an annual basis has created a growing liability.
And by the time you pay back that growing liability, there is a substantial amount of time that will pass before you see cash flows out of that. There's a guaranteed amount of six and a half 8642

1 million, I think, through 2005. And that goes down
2 to two million. And then after that, it's just the
3 actual amounts. But when those actual amounts are
4 paid, you have to first repay the amounts that Sony
5 hasn't been paid, and/or the investments that
6 they've made that in fact they have not been paid
7 back for, including interest.
8 And I looked at that and it's a long while,
9 once you get through this guaranteed portion, before
10 you'll see a cash flow on that investment.
11 Q. So based on everything that you've
12 considered, I believe you said that Sony is putting
13 more royalties -- more copyrights into that catalog
14 as time goes on?
15 A. They continue to invest.
16 Q. Mr. Jackson is taking more than his share
17 out in terms of cash on an annualized basis?
18 MR. MESEREAU: Objection; misstates the
19 evidence.
20 THE WITNESS: I wouldn't say he's taking
21 more than his share, but --
22 THE COURT: Just a moment.
23 THE WITNESS: I'm sorry.
24 MR. AUCHINCLOSS: Okay.
25 THE COURT: Well, I'll allow the answer.
26 You may --
27 THE WITNESS: I wouldn't say he's taking
28 more than his share. I would say that Sony isn't 8643

getting their share.
Q. BY MR. AUCHINCLOSS: So is the catalog producing what was anticipated when this agreement was originally reached?
A. I don't know when it was anticipated, or when it was reached. I don't know.
Q. So tell us about this -- the structure of Mr. Jackson's interest in the ATV catalog.
MR. MESEREAU: Objection; foundation.
THE COURT: Overruled.
You may answer.
Q. BY MR. AUCHINCLOSS: You mentioned he doesn't own half of that catalog today on an asset basis. In other words, if it's worth a billion dollars, he doesn't own half a billion dollars, doesn't have a half-a-billion-dollar interest in that catalog; is that correct?
A. Well, he owns half of the catalog.
Q. Yes.
A. But his interest in the catalog is not worth half of the catalog value --
Q. All right. So --
A. -- because of the front-end loading of the cash flow stream that has gone to him and not gone to Sony.
Q. So if the catalog gets sold, then Sony walks away with more money than Mr. Jackson?
A. Yes, because he has to repay all of the 8644

advances on all of the investments that Sony has made. Absolutely.
Q. And you stated that Mr. Jackson has a right to sell his interest in that catalog for $200 million; is that correct?
A. There is a “put” option. That means I can -- it’s a technical term in financial -- it means I can put this opportunity to you, and that “put” option is worth 200 million. Starting on December 2005, Mr. Jackson can force Sony to pay him $200 million for that investment for his share.
Q. And I think you previously testified that in February of 2003, that asset, his Sony/ATV catalog, was mortgaged to the tune of $200 million; is that correct?
A. That’s right. But remember, you also have to consider the taxes on that. If you sell that, you’re going to pay taxes.
Q. Good point. Tell me what happens, from a tax basis, if Mr. Jackson has to sell his Sony/ATV interest for $200 million to pay off that $200 million loan.
A. His basis is somewhere around $40 million, meaning his cost basis. So you’d subtract the 200 from the 40, and you get a gain of about 160 million, and you’d basically calculate it in what’s called capital gains rates, which federal and state would be about 25 percent, so you’d pay about $40 8645

1 million in taxes.
2 Q. Now, you said that he can exercise this
3 “put” option asking Sony to purchase that catalog in
4 December of 2005, correct?
5 A. That’s correct.
6 Q. When is that loan due, that $200 million
7 loan?
8 A. December 20th, 2005.
9 Q. Now, assuming, as Mr. Mesereau asked you to
10 do, assuming that he was just going to sell his
11 interest in the Sony/ATV catalog back in, let’s say,
12 2003 - okay? - February of 2003, and assuming Sony
13 agreed and said, “We’ll sell our interest. We’ll
14 sell it on the open market.”
15 Using your cash flow analysis, can you give
16 us -- get us in a range, a reasonable range on a
17 cash flow basis what Mr. Jackson’s interest would be
18 in the sale of that Sony/ATV catalog, if it were to
19 occur?
20 A. My -- it would be --
21 MR. MESEREAU: Objection; foundation.
22 MR. AUCHINCLOSS: He’s testified he did a
23 cash flow analysis. Counsel asked him this question
24 as part of his opinion.
25 THE COURT: All right. I’ll allow the
26 answer.
27 As I understand the question, he’s asking
28 you what interest he would have if it were sold. 8646

MR. AUCHINCLOSS: That is the question.
THE COURT: The catalog were sold.
THE WITNESS: In 2003, that interest was probably worth a couple hundred million dollars.
Q. BY MR. AUCHINCLOSS: Okay. Now, moving on to the MIJAC catalog, you said that you did a cash flow analysis on that. What -- give us the same analysis in terms of what that catalog was worth to Mr. Jackson back in 2003.
A. Well, as I mentioned, the royalties had dropped about 25 percent -- 33 percent, excuse me. So if you take 33 percent off the value of 128 million, then it comes up to somewhere between $75 and $80 million.
Q. And he's also asked you some questions about Neverland. Do you know if Neverland has a mortgage on it?
A. Neverland is cross-collateralized with one of the Sony/ATV loans to the extent of $18 million.
Q. What do you mean by "cross-collateralized"?
A. The collateral on the MIJAC loan -- excuse me, the $24 million loan, which is now $70 million, is collateralized by the MIJAC catalog. The bank has asked for additional collateral, including an $18 million lien on Neverland.
Q. Why would a bank ask for additional collateral on a $70 million loan?
A. They want more collateral. 8647

Q. Would it have anything to do with the perception of what that catalog was worth?
A. Certainly.
Q. And what would the tax ramifications be if Mr. Jackson was to sell his Sony -- or sell his MIJAC catalog for, let's say, 70 million?
A. It would be the same calculation. The interest -- the investment was about ten million. So you'd have about a $60 million gain, I'm just rounding it to 70. Less ten million, or 60 million, at 25 percent would be about a $10 million tax, so you'd have a net of $50, $60 million.
Q. Okay. So summarizing everything, is it your testimony that Mr. Jackson's ATV catalog is fully mortgaged? In other words, if -- well, let me back up.
As of February of 2003, your testimony is that the Sony/ATV catalog was worth $200 million, approximately?
MR. MESEREAU: Objection. Misstates the evidence; no foundation.
THE WITNESS: I think that's a --
MR. AUCHINCLOSS: Just a minute.
THE WITNESS: Oh, I'm sorry.
MR. AUCHINCLOSS: And I should rephrase that, Your Honor.
THE COURT: All right. Rephrase it.
Q. BY MR. AUCHINCLOSS: Your testimony is that 8648

that catalog, Mr. Jackson's financial interest in that catalog, the Sony/ATV catalog, in February of 2003 was worth approximately -- I know we're not talking about a sharp pencil here, but approximately $200 million?
MR. MESEREAU: Objection; foundation.
THE COURT: Overruled.
He's asking you if that's what you've already testified to.
THE WITNESS: That's correct.
Q. BY MR. AUCHINCLOSS: Okay. And there's a loan against it at that time for $200 million?
A. That's correct.
Q. And if he sells that asset for $200 million, he has to come up with another $40 million from somewhere to pay taxes?
A. That's correct.
Q. He also has another $10 million in unpaid vendors that he has to come up with?
A. As of February 13th, that's correct.
Q. Okay. And if he sells his MIJAC catalog for $70 million, which is about your stated -- you stated that's about what it's worth?
A. Approximately.
Q. It is encumbered or there are loans against that catalog to the tune of about 70 million?
A. $70 million, correct.
Q. And if he sells that catalog, then he -- he 8649

incurs an additional ten million in taxes?
A. That's correct.
Q. You previously testified that Mr. Jackson was accruing debt at a rate of about, I believe it was, $20 to $30 million a year?
A. That's correct. To fund living expenses.
Q. So his living expenses were exceeding his income for that amount per year?
A. Correct.
Q. And as a financial advisor, is that a advisable course of action for somebody?
A. None that I would give.
Q. Okay. As far as providing you with information, is it -- is it true that I personally have not provided your office with anything in terms of me giving you documents?
A. Do you mean you personally?
Q. Yes.
A. I don't know where the documents came from. I assume they came from your office. But you didn't hand me any document, no.
Q. Very well. Did Chris Linz of our office, who you've mentioned -- do you know who she has?
A. Yes, I've met Chris Linz.
Q. Was she your contact point in the District Attorney's Office?
A. With respect to documents. I mean we spoke to you about documents. 8650

Q. Yes.
A. We spoke to Miss Linz. And my understanding was Miss Linz was the one that passed documents to us.
Q. And were you given an opportunity, you or your staff given an opportunity to go through all of the D.A.'s records to review documents for purposes of your analysis and opinions in this case?
A. Yeah, we were made available to all the documents I believe you had.
Q. No restrictions whatsoever?
A. No. The only thing was that some just wasn't available.
MR. AUCHINCLOSS: Thank you. I have no further questions.
THE COURT: It's about time for the break, Mr. Mesereau.
MR. MESEREAU: Oh.
THE COURT: Unless you were just going to ask one question.
MR. MESEREAU: No, Your Honor.
THE COURT: All right.
(Recess taken.)
THE COURT: All right. I think it's okay now.
Q. BY MR. MESEREAU: Did you say you did an appraisal of the value of the Sony/ATV catalog?
A. No, I considered values. I did not do a 8651

formal appraisal, as I mentioned earlier.
Q. Do you have a piece of paper which reflects your values?
A. I have it in my mind, yes.
Q. You didn't reduce it to paper?
A. I have papers in front of me here that show me how I get to that. But there's nothing that's formalized as far as a valuation report, no.
Q. So pretty much it was done in your head?
A. No. I mean, it was done with calculators and with computers and the like, but I understand the value, and about the amounts I stated at those times.
Q. Did the computer generate any type of report showing your analysis?
A. No. It's -- basically I have it in my notes in front of me.
Q. Can I take a look at it?
A. Certainly.
MR. MESEREAU: May I approach, Your Honor?
Q. Now, I realize you said you're not an expert in the music industry, right?
A. That is true.
Q. And you indicated you didn't know who the recording artists were whose music were copyrighted and owned by the catalogs, correct?
A. No, I've seen that. I just don't recall as I sit here right now. The appraisal that was done 8652

in 1999 lists all of the copyrighted material in that document.
Q. How many recording artists are we talking about; do you know?
A. In the Sony/ATV?
Q. Yes.
A. I don't recall. There was a number, as I recall.
Q. There were hundreds, correct?
A. Yeah. There was a substantial amount, yes.
Q. You had country western musicians, correct?
A. That's correct.
Q. You had very different kinds of musicians in that arrangement, correct?
A. There was a wide disparity of types of music, yes.
Q. And how many years out did you project the value of the catalog?
A. Well, I looked at when Mr. Jackson's interest would actually begin to see the benefit of some cash flow. And it's well out into 2015, I believe.
Q. Well, if you don't know who any of the recording artists are and you can't put a value on their music today or tomorrow, how can you possibly give a value to the catalog?
A. Because I used the financial statements that were prepared by Pricewaterhouse Coopers. 8653

Q. When?
A. They were prepared, I think, in 2003.
Q. Well, what is the music going to be worth in 2006 or 2007 when you look at it artist by artist? You don't know, right?
MR. AUCHINCLOSS: Objection. Argumentative and irrelevant.
THE WITNESS: Well --
THE COURT: Overruled.
You may answer.
THE WITNESS: No, certainly you do. I mean, that's exactly how you do valuation, is you look at what the catalog is producing in cash flow streams, and then you value that. And that's going to change over time. But you have to use historical paths to then try and figure out what the future will be.
Q. BY MR. MESEREAU: Did they pick up any artists last year?
A. I suspect they did. There's constant investments.
Q. Do you know who they were?
A. No, I don't.
Q. Do you know what their music is worth?
A. No, I'm simply looking at the cash flow stream that this partnership is producing and projecting that out into the future.
Q. If --
A. That's the only way anyone can do a 8654

valuation. No one is going to value the cash flow stream based on artists that aren't even in the catalog yet.
Q. But if you have artists who are in the catalog and you have someone who's an expert on how their music is marketed and how it might be marketed differently this year or next year, you can place additional value, correct?
A. Additional over what? I'm simply using the real numbers as to what the cash flow was, and that cash flow would generate a value. And that's how you value that asset.
Q. Has the cash flow changed from year to year?
A. Yes.
Q. Where is it going to be three years from now? Do you really know?
A. That's the projection you have to make --
Q. Okay.
A. -- to come up to a value. And that's exactly how it was valued -- pardon me.
Q. Sure.
A. That's exactly how it was valued by the valuation people in 1999, was simply to look at an income stream, try and understand what that income stream was going forward, and then put a multiplier on it. That's how any valuation works.
Q. So in other words, if you're going to try and put a value on this music catalog and project 8655

out three or four or five years from now, you don't need to know who the recording artists are, what kind of music they've generated, and where that music is likely to be or not be in a few years, right?
A. No, that has to be considered. But again, historical paths to the cash flow is what's most important.
Q. So now you're conceding it is important to know who the recording artists are and what value you might be able to place on their music two, three, four, five, ten years from now, right?
MR. AUCHINCLOSS: Objection; argumentative.
THE COURT: Overruled.
You may answer.
THE WITNESS: As of 2003, we know what the cash flow was. And at that point in time, you can value based on the cash flow. In fact, if there are other artists added in 2004 and 2005, that could change the cash flow, and that should be considered, absolutely. But in 2003, when you have the figures, that cash flow is known and can be used to then value into the future.
Q. BY MR. MESEREAU: Okay. Looking at the document that we talked about earlier, which is a letter from International Business Management dated February 13th 2003, to Attorney David LeGrand, okay?
A. Yes, I remember that memo. 8656

Q. That's the letter that, on page two, says the value of the Sony/ATV catalog is estimated to be approximately one billion dollars; right?
A. That's correct.
Q. Okay. According to that letter, which you certainly did consider in your work, right?
A. That is correct.
Q. It says that in November of 2005, the bank will enforce a put, right?
A. Correct.
Q. Which forces Sony to either buy out Mr. Jackson's interest at fair market value, right?
A. Correct.
Q. Sell the entire catalog to a third party, right?
A. Correct.
Q. Or give Mr. Jackson the opportunity to purchase Sony's interest in the catalog, right?
A. Correct.
Q. And do you have any way of knowing what Sony's interest in the catalog will be in November of 2005?
A. No.
Q. Why not?
A. Because I don't have that -- I haven't calculated what Sony's interest is.
Q. How would you do it, if you were going to?
A. The same way as you do with Mr. Jackson's 8657

interest, you simply look at the cash flows that would be accruing to or earned by Sony, project that out over time, and then discount it back.
Q. How do you relate the one-billion-dollar amount to the value either side has in the catalog?
A. Well, the one billion dollars is the entire catalog.
Q. Right.
A. It's made up of two components, the Sony component and Mr. Jackson's component. And the two would equal whatever the value is.
Q. Okay. So if the value is one -- is estimated at one billion dollars, each side would theoretically have a $500 million interest, true?
MR. AUCHINCLOSS: Objection; misstates the evidence.
THE COURT: Overruled.
You may answer.
THE WITNESS: If it's -- if the catalog is worth a billion dollars, that's what the catalog's worth. Then you have to go about the process of understanding what the cash flows which will accrue to each party will be, and that's how you value the total one billion dollars.
Q. BY MR. MESEREAU: And you have no way of knowing what third parties are out there trying to purchase it, correct?
A. I do not, no.

MR. MESEREAU: Okay. No further questions.
MR. AUCHINCLOSS: I have no further questions, but I do have a request at sidebar.
THE COURT: All right. We should mark the Power Point.
MR. AUCHINCLOSS: And I have a copy of that, which I'll mark.
THE COURT: And you may approach.
(Discussion held off the record at sidebar.)

FURTHER REDIRECT EXAMINATION
BY MR. AUCHINCLOSS:
Q. All right. Mr. O'Bryan, I'm just going to finish up with one final question.
Based upon your cash flow analysis and everything you know about this case, what is the maximum -- in general, what is the value of what Mr. Jackson could obtain for this ATV/Sony catalog in February of 2003?
MR. MESEREAU: Objection. No foundation; no expertise.
MR. AUCHINCLOSS: I phrased it in terms of a cash flow analysis, which he's testified extensively about.
THE COURT: What I'm going to do is limit the question to a little different question, which would be what was the value he used in determining the net worth figure that he's already testified to

1 the jury.
2 MR. AUCHINCLOSS: Maybe I'll lay a couple of
3 foundational questions before I ask that one. Just
4 a couple.
5 Q. Mr. O'Bryan, are you familiar with how these
6 catalogs are appraised, in general terms?
7 A. Yes, I am.
8 Q. And when an appraiser conducts an appraisal
9 of a music catalog, do they use a cash flow
10 analysis?
11 A. Yes, they do.
12 Q. And are cash flow analyses something that
13 you do in the course of your business as a forensic
14 accountant or a CPA?
15 A. All the time.
16 Q. And is -- and did you do such an analysis in
17 this particular case?
18 A. We did, yes.
19 Q. And based upon that, can you tell us what
20 your analysis -- what your conclusion was based on a
21 cash flow analysis of the value of Mr. Jackson's
22 share of the ATV catalog in February of 2003?
23 A. As I stated, I believe that's $200 million.
24 MR. AUCHINCLOSS: All right. Thank you.
25 THE COURT: Mr. Mesereau?
26
27 FURTHER RECROSS-EXAMINATION
28 BY MR. MESEREAU: 8660

Q. When you say Mr. Jackson had a $200 million interest in the catalog in February of 2003, are you suggesting that if he sold it for $200 million, he would end up with zero because of his debt?
A. Yes. And/or taxes.
Q. And where did the other 700 million in value of the catalog go to? Sony?
A. Go to Sony, yes.
MR. AUCHINCLOSS: Objection; misstates the evidence.
Q. BY MR. MESEREAU: Even though they each had a 50 percent interest --
THE COURT: Just a moment.
The objection is overruled.
Q. BY MR. MESEREAU: Even though they each had a 50 percent interest in something estimated at one billion dollars, you think Sony's interest is really worth 700 million, correct?
A. Yes, at least that.
Q. And tell me how you arrived at that conclusion.
A. Again, it's just simply looking at the cash flows that would be accruing to Mr. Jackson over time, beginning in 2003, out over a period of time. And because of the fact that he has taken much more than Sony, Sony is due an equal amount. Sony is additionally due the investments that they have made, plus interest. The cash flows that would 8661

1 accrue to Mr. Jackson and/or his interest would not
2 even occur until about 2015. At that point in time,
3 the discount rate used would, quite frankly, have a
4 value of around $200 million.
5 Q. Do you know Mr. Jackson was offered 400
6 million for half of his interest in 2003?
7 MR. AUCHINCLOSS: Objection; assumes facts
8 not in evidence.
9 THE COURT: I guess the question is are you
10 aware of any such offer.
11 THE WITNESS: No, I'm not.
12 Q. BY MR. MESEREAU: Are you aware of what
13 anyone has ever offered Mr. Jackson for his interest
14 in the catalog?
15 A. No, I'm not.
16 Q. Have you ever tried to market a music
17 catalog in your career?
18 A. I have not, no.
19 Q. Ever tried to negotiate a sale of any
20 interest in a music catalog?
21 A. I have not, no.
22 Q. Is this the first music catalog you've
23 analyzed with your cash flow analysis?
24 A. No. I also did one for Mr. Bowie, David
25 Bowie.
26 MR. MESEREAU: No further questions.
27
28 FURTHER REDIRECT EXAMINATION 8662

BY MR. AUCHINCLOSS:
Q. If Mr. Jackson wanted to sell his share of the ATV catalog to somebody else in 2003, could he have done it?
A. Only with the approval of Sony.
Q. And as far as this put goes, did you consider that in your cash flow analysis, the fact that in December of '05 he would receive $200 million?
A. Certainly. I mean, that's a stated amount that he could get in '05.
Q. So if he sold it in 2003, he would accrue -- what was your tax analysis in terms of how much capital gains tax he would have to pay?
A. 25 percent.
Q. So $40 million?
A. Off --
Q. Off the 200 million?
A. That's correct.
Q. Okay. Finally, there was --
A. It was $50 million. Well, no, that's not true because you have to take the basis out.
Q. So you tell me.
A. So it was about 40 million, as I recall.
Q. And Mr. Mesereau said if Mr. Jackson got $200 million, then Sony would be entitled to $700 million. I believe we've got a math problem there.
A. Well, the 800. That's why I said -- 8663

Q. It would be 800. All right. Thank you.
Nothing further.
No further questions, Your Honor.
THE COURT: All right. Thank you.
For the record, what's the exhibit number on the Power Point?
MR. AUCHINCLOSS: That would be 886, Your Honor.
THE COURT: All right. Thank you.
Call your next witness.
MR. ZONEN: Call Rudy Provencio to the stand, please.
MR. PROVENCIO: Right here?
THE COURT: Yes, please. When you get there, remain standing.
Look at the clerk over here. Raise your right hand. Right here.

RUDY R. PROVENCIO
Having been sworn, testified as follows:

THE WITNESS: I do.
THE CLERK: Please be seated. State and spell your name for the record.
THE WITNESS: My name is Rudy R. Provencio.
R-u-d-y; R.; P-r-o-v-e-n-c-i-o.
THE CLERK: Thank you.
MR. ZONEN: May I proceed? 8664

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. ZONEN:

Q. Mr. Provencio, what is -- good afternoon.

A. Hello.

Q. What is your current occupation?

A. Independent contractor.

Q. What kind of an independent contractor are you?

A. For entertainment, placement of music for film and television.

Q. What does that mean?

A. Basically it means that I take music that already exists, and I place it in film and television, depending on what they are looking for or what they want. You know, like for a -- for a commercial, they would like want something, maybe an oldies --

BAILIFF CORTEZ: Excuse me.

THE WITNESS: Can you hear me? Can you hear me okay? Sorry.

THE BAILIFF: If you could just scoot closer to the mike.

THE WITNESS: Scoot closer? For T.V. or film, basically what are they looking for? If they’re looking for an oldies, like if -- for instance, if The Gap is looking for an old 8665

song, I would secure rights for that -- for that song and bring it in, and secure the legal part of it, and the whole nine yards, so --
Q. BY MR. ZONEN: Do you work for a company or are you self-employed?
A. Self-employed.
Q. How long have you been in this business?
A. The entertainment business?
Q. Yes.
A. 20 years.
Q. Prior to that, what type of work did you do?
A. I worked for record companies, various record companies.
Q. Do you know Marc Schaffel?
A. Yes, I do.
Q. Did you know him by the name Fred Schaffel?
A. Yes, Fred Schaffel.
Q. When did you first meet Mr. Schaffel?
A. I met him in high school in 1983, ‘84.
Q. You both went to high school, the same school?
A. Yes, Toledo, Ohio.
Q. In Toledo, Ohio?
A. Uh-huh.
Q. At some point in time, did you actually do business with Mr. Schaffel?
A. Not until much later, which would have been 2001. 8666

Q. And in 2001, did he contact you or did you contact him?
A. He contacted me.
Q. Now, how did he know who you were at that point or where you were or what you did?
A. He came over to the record labels a couple of times to pick up CDs and such, and I kept in contact with him. When he moved out to California, I met up with him, I believe in '93. Yes, it would have been '93, because I was working at Warner Brothers Records at that time, so I met up with him and, you know, we kept a casual contact.
Q. Were you both living in the Los Angeles area during that time?
A. Yes.
Q. All right. Did he invite you into some form of business adventure?
A. Yes. With him and Michael Jackson.
Q. All right. What was it exactly that you were invited to go into?
A. We were -- well, I was invited to come and participate in a benefit single called "What More Can I Give?" and he said that it was a Michael Jackson and Marc project, and they would -- were both going to hire me to work on this project if I was willing to come on board with them.
Q. All right. Did you eventually talk with Mr. Jackson about your involvement in that? 8667

A. We had a meeting at -- well, we first had a meeting with -- the first one we had at The Beverly Hills Hotel with Lee Davidian, I think is his last name, where it was Ali, myself, Marc, and we talked about doing “What More Can I Give?” into a game that Ali was producing --

Q. Uh-huh.

A. -- or such.

So, you know, there was a lot of material to cover in that meeting. I remember that, because there was going to be a game featuring Michael Jackson in the game --

Q. All right.

A. -- and the music of “What More Can I Give?” was going to be in that, so we talked about that.

Q. Explain -- “What More Can I Give?” you mentioned was a benefit single.

A. Charity single.

Q. What does that mean?

A. Basically we hadn’t announced what Michael -- excuse me, what Michael’s charities were going to be yet, because Michael would have to do that. That’s -- he is the captain of the helm, so he’d have to do that. But basically what the idea and the premise was to do a benefit single that would benefit people just in general and Michael’s charities in particular. We hadn’t narrowed it down exactly what those charities were going to be until, 8668

you know, a little bit more into the project.
Does that answer your question?
Q. Yes, but we'll have a couple more, as you can imagine.
A. All right.
Q. How does a single benefit anybody in the day and age where you only buy CDs with many songs on them? What --
MR. MESEREAU: Objection. Move to strike; colloquy.
THE COURT: Coming from you?
(Laughter.)
MR. ZONEN: My sentiments exactly.
THE COURT: All right. Stricken.
MR. ZONEN: Stricken, all right.
Q. How does a single benefit anybody? How do you market a single?
A. Well, we were looking at it to be the next "We are the World." You know, Michael is -- was a genius behind that. That made more money than any other single in history.
Q. Tell us what "We are the World" was.
A. Oh. I believe in 1983 or '84 it came out and basically it made a trazillion dollars. I don't know how much exactly. I won't say, you know, $100 million, because I don't know. But we were estimating that even if "What More Can I Give?" could make half of that, that would make like 8669

$50 million right there and would be able to go to some of Michael's charities, you know, in the process.
Q. Okay. How is it marketed?
A. It --
Q. A single, how do you market a single?
A. Well, it depends. Basically, you know, we'd have -- well, the way that I was thinking that we were going to do it, the way that we had talked about it is, we would do a press release later in regards to who was going to be the beneficiaries. But Michael would have to have done that because that's going to be Michael's charities.
But -- but it would have gone through the regular routes, which would have been a record company for the distribution. We didn't really want Sony at the time. There was some problems with Sony. So we were going to look, per advice, Marc and Michael, to go other places and look at other distribution, like I believe we ended up talking with Zamba Entertainment, and they handled Britney Spears and Backstreet Boys and stuff, and so they were hot, so we were thinking we were going to possibly go with their distribution.
Q. Now, like, would this be a song that would have been performed by multiple groups?
A. By multiple who?
Q. Groups. Performers. 8670

A. Multiple performers, yes.
Q. Performers.
A. We had a recording time in the studio and we brought in quite a few artists.
Q. Is that, in fact, what “We are the World” was?
A. No, that was an arrangement that was different. They came from an awards show and went right across the street, essentially, or down the street and they recorded it in one fell swoop.
Q. And who are “they”? You say “they” came and did that.
A. Oh, well, the performers that were on “We are the World,” Kim Carnes, Huey Lewis and the News, Michael was there, Diana Ross, everybody went from an awards show looking good and went into this thing with recording, filming, the whole nine yards. Ours was a little bit different, because what we were going to do is bring people in one at a time and record it, so it was a little bit more -- it was essentially the same premise, but a little bit more lengthy.
Q. All right. Were you anticipating having multiple groups or performers?
A. Yes, we did.
Q. And were you going to be generating an entire CD or a single song?
A. We were going to have a Spanish version that 8671

was completed with Casey Porter doing the Spanish version, which was completed, and then we were going to have the English version and many, many, many different artists. Santana played on the Spanish version. And so we were going to have many artists on -- essentially the same amount of artists, but a little bit different with the Spanish version than the other one.

Q. Again, this is a single song?

A. Yes, a single song with many versions. So that would be considered what's called a CD-5. So that would be different versions of the same song.

Q. By "different versions," how would it be marketed? I mean, in a physical form.

A. Well, the marketing, it's its own unit when you look at it, because it's a Michael Jackson song. It's -- you know, which you can't get bigger than that. And, you know, you've got a benefit. You would have a press -- world press release around it. You know, it would create its own buzz. You wouldn't even have to take out an ad anywhere, so then you'd have to have the disks from the record label to kind of get it in the public's hands, which would have been Best Buy and the other chains.

Q. So you actually purchase it as a CD?

A. You would purchase it as a CD.

Q. On the CD is one single song?

A. A single song with many versions, yes. 8672

English and Spanish as well. And re-mixes. There were going to be re-mixes by Junior Vasquez.
Q. That does sell?
A. Oh, absolutely. For something like -- if you can tie into something that is of importance, like charities and things like that, then you -- you have a commodity that's very well sought after.
Q. Tell me when it was that you were called into this. When were you invited to explore the possibilities of joining this enterprise?
A. 2001.
Q. Do you remember when in 2001?
A. June is the first meeting.
Q. Okay. The first meeting between you and who?
A. Marc and Michael. And Ali joined us on that first meeting.
Q. All right. And that first meeting was in a hotel in Los Angeles; is that right?
A. Yes.
Q. Now, was the song already drafted? Was it already performed? Was it already recorded?
A. Yes, Michael had done a demo of it.
Q. Okay. Were artists lined up to participate in the recordings?
A. Yes. Absolutely.
Q. Had some of the artists already participated in the recordings? 8673

A. Not until -- not at that time. Not June.
Q. Okay.
A. Michael had a demo, and the only thing that was on it was Michael's voice.
Q. All right. Is it possible, in fact, to be able to have multiple artists performing at different locations at different times --
A. Absolutely. That's what we did.
Q. One of the things you have to do is wait until the whole question is asked.
A. Oh, I'm sorry.
Q. She goes nuts otherwise.
A. Oh, I'm really sorry.
Q. Is it possible to be able to, in fact, perform at different places and different times and then be able to mix it all into one product?
A. You can perform many places at the same time, and so that's -- yes. And then you can mix it as one product later, yes, absolutely.
Q. So it was not necessary to be able to have everybody perform at the same time, same location as was done in "We are the World"?
A. Correct.
Q. That was a matter of convenience back then?
A. That was a matter of happenstance.
Q. Okay.
A. I believe. You just happened to go across the street and there you are -- 8674

Q. Okay.
A. -- performing a song. I mean, they planned it. But they also planned it that all these performers could -- from what I understand.
Q. You described this as a benefit single, which means part of the purpose is to raise money for charities; is that correct?
A. Absolutely.
Q. Was it also intended to be for profit?
A. Well, yeah. You have to make a profit to keep going. I mean, it's like, you know, you can't be in the ditch for $20 million. Yeah, so it had to make a profit somewhere.
Q. So not just pay expenses. This wasn't just a charitable enterprise exclusively, but it was going to generate profit for some people. Would that be correct?
A. Yes.
Q. Okay. Now, were you hired on salary?
A. Yes. Salary, uh-huh.
Q. Were you ultimately hired to do this?
A. Yes.
Q. And did you actually work on this project?
A. Yes.
Q. And by the time you -- from the point that you began the project to the time that you officially ended your employment on this project, how long had you worked on it? 8675

A. Until 2001 -- June is when we took the first meeting. I'd have to look at my records to see exactly when they signed my contract, and then it was 2003 of February, the 25th, I believe I received my last check.
Q. All right. And when did you cease your employment? Was it on the day you received your last check?
A. No, I stopped going in the office I believe it was the first week of August.
Q. What kind of things were you expecting to do in terms of promoting and marketing and creating this product?
A. Well, nobody had any record experience.
MR. MESEREAU: Calls for speculation.
MR. ZONEN: I believe he did it.
THE COURT: But you asked him what he was expected to do.
MR. ZONEN: All right. Let me change the question, then.
Q. What actually did you do during the two years of employment in this capacity? What types of things did you do?
A. Okay. Well, I was the general manager of the label of Neverland Valley Entertainment. I oversee the books. Not all of the books, but a certain major portion of the books. Everything from the task of filing, to making sure artists are where 8676

they're supposed to be, and doing the things that we're supposed to do to get things done to get the single finished, and to facilitate any other dream or necessity that Michael might have that would fall into us participating with him --
Q. All right.
A. -- on that.
Q. You've mentioned Neverland Valley Entertainment. What exactly is Neverland Valley Entertainment?
A. It's Marc and Michael's company.
MR. MESEREAU: Objection; foundation.
THE COURT: Sustained.
Q. BY MR. ZONEN: All right. At some point in time, did you become part of Neverland Valley Entertainment?
A. Well, yeah, when they signed my contract.
Q. And during the course of your two years of working as the general manager of Neverland Valley Entertainment and based on your conversations with both Marc and Mr. Jackson, did you learn what Neverland Valley Entertainment was?
MR. MESEREAU: Objection. Assumes facts not in evidence and foundation.
THE COURT: Overruled.
You may answer.
Q. BY MR. ZONEN: What is it?
A. Can you state the question again? I'm 8677

sorry.
MR. ZONEN: Perhaps the court reporter could read it.
(Record read.)
THE WITNESS: Well, it was a Michael and Marc company. That's what it was.
Q. BY MR. ZONEN: Was it created while you were there?
A. Well, yeah. It was created as -- as -- it wasn't -- it wasn't flying until we got a loan, but, yeah, we were in the midst of having conversations with Parviz to get a loan, or they were, to get a loan to get this thing flying.
Q. All right. Who were the people who were involved at that time, at the time that you came into it, with Neverland Valley Entertainment?
A. Who were the people involved?
Q. Yes.
A. It would have been Michael, Marc, myself. You know, Dieter and Ronald were on the fringes, but the -- but the single was Marc and Michael.
Q. The what was Marc --
A. The single. The "What More Can I Give?" was Michael and Marc's creation.
Q. Did you have meetings with Mr. Jackson pursuant to your coming on board?
A. Yeah, we had meetings at The Beverly Hills Hotel, and then we had meetings at The Universal 8678

Hilton.
Q. What discussions did you have with Mr.
Jackson about your involvement in this in both --
either of those two meetings?
MR. MESEREAU: Objection; vague.
THE COURT: Overruled.
You may answer.
THE WITNESS: Okay. The first -- the first
meeting, we talked about the video game, and then we
talked about how "What More Can I Give?" would be a
great project, which -- you know, which we could
work on, make some cash, and -- you know, and
basically have it segue way into many other things.
You know, maybe -- because there wasn't -- we had a
conversation in regards that the "What More" -- or
the "We are the World" wasn't marketed to its full
potential. There weren't like a lot of T-shirts
made. There was different marketing --
MR. MESEREAU: Objection; nonresponsive.
THE COURT: Sustained.
MR. ZONEN: I'm sorry, Your Honor?
THE COURT: Sustained.
Q. BY MR. ZONEN: Did you have a discussion as
to how "What More Can I Give?" would be marketed
during either of those two meetings?
A. Yes.
Q. What was the nature of that discussion?
A. The nature was that basically we needed to 8679

reach its full potential, much more and much better, making it much bigger and making much more money than “We are the World” made. How are we going to do that? Are we going to take a present situation and make it better? You know. Basically this present model that we had was “We are the World.” How do we explore that?
Q. And you said --
A. And you need a business plan.
Q. And you said “and make more money.” Was there a discussion with Mr. --
A. It had to be bigger.
Q. Hold on.
A. Sorry.
Q. You’ve got to wait until the question’s asked.
Was there a discussion with Mr. Jackson as to the potential of what could be made on the production of “What More Can I Give?”
A. To answer your question, Michael wanted it bigger and better than “We are the World.” So it had to be more than “We are the World,” which unfortunately I don’t remember off the top of my head. I know it was like $100 million, something crazy like that.
Q. Mr. Jackson had indicated he wanted this to exceed that?
A. Oh, yeah. He was very excited. It had to. 8680

It had to.
Q. Was there any discussion as to what percentage of this would actually go toward the charitable causes and what would be profit?
A. We hadn't really finessed that all out. I mean, we really were -- we were -- everything was moving very quickly, like everything in my experience with Michael. Everything moves very, very quickly, and Michael wants his results now. And we really hadn't gotten down to sitting with lawyers to work out percentages and things like that.
We knew essentially, you know, what we wanted to do overall, but we had to get a product made first, so that was -- that was our first and most important thing was to get this product made.
Q. Did you ever actually sit down with lawyers and work out details of percentages as to who would get what during the course of that two years you worked on that project?
A. No.
Q. Did you have some form of contract signed with either Michael Jackson or Marc Schaffel as to what your compensation would be?
A. Yes. They gave me a point on the record.
Q. Did you have a salary in addition to a point on the record?
A. Yes, I did. 8681

Q. What was the salary?
A. 225,000.
Q. And was that for the duration of the project?
A. For the project.
Q. Would it make a difference how long the project took?
A. Not really. The project had to be done, so --
Q. Did you have a sense at the time as to what -- I mean, did you anticipate what it would be?
A. A year, maybe a little bit more. But a year.
Q. Now, you also said a point was given to you. What does that mean?
A. Well, a point is basically a percentage, or a 1 percent of the gross, or the total of a project. Marc got four points. Michael had given Marc four points. And Michael and Marc had given me one point.
MR. MESEREAU: Objection; nonresponsive.
THE COURT: Sustained.
Q. BY MR. ZONEN: All right. Let's talk about what was going to you, and then we'll talk about Mr. Schaffel.
A. Okay.
Q. One point was given to you, and you mentioned the gross. Explain what that means. 8682

A. Well, what the album makes, you know, is considered -- you know, what it really actually -- what's in the kitty at the end of the day is really -- you know, what you're selling -- I'm not making sense here, but what -- when the product is sold, you know, you've got your expenses covered first. That comes out of -- like you make a dollar, and let's say you just made the dollar from that CD. You're -- 60 cents of it is taken away because it's, you know, marketing, whatever. This was going to be a cheap single, so we weren't going to be spending a tremendous, tremendous amount of money, so there would be more take-home, you know, for Neverland Valley Entertainment, so -- I think I just got lost.

Q. Let me ask this: The 1 percent gross --

A. Uh-huh.

Q. -- does that mean your 1 percent would come to you before any of the expenses were paid?

A. Oh, no. We hadn't worked that all out yet. That hadn't been worked out. So if the record made 50 million dollars, you know -- you know, you have to remember, we hadn't sat down with the lawyers to get the exact verbiage down, so we were estimating. And our assumptions in our meetings was that if it made $50 million, I would be getting 1 percent of that.

Q. Which would be $500,000? 8683

A. Or if it made more.
Q. Or if made 100 million, you'd get one million?
A. Exactly.
Q. All right. Did you negotiate that? In other words, was that part of the negotiation as you came into this project?
A. No.
MR. MESEREAU: Objection; relevance.
THE WITNESS: No.
THE COURT: Sustained.
Q. BY MR. ZONEN: When did you get the 1 percent?
MR. MESEREAU: Objection; relevance.
THE COURT: Sustained.
Q. BY MR. ZONEN: Who was it who gave you the 1 percent?
A. Michael and Marc.
MR. MESEREAU: Objection; relevance.
THE COURT: Overruled.
Q. BY MR. ZONEN: Go ahead.
A. Michael and Marc.
Q. Was that in the form of a document signed by both of them?
MR. MESEREAU: Objection. Leading and relevance.
THE COURT: Overruled.
You may answer. 8684

THE WITNESS: Yes. They both signed it.
Q. BY MR. ZONEN: And did you -- and did you commence work on this project?
A. Yes.
Q. All right. What were the -- over the next, say, couple months after you began working in June of '01, did you speak with Mr. Jackson on any kind of regular basis?
A. Well, we had the studio time, and we'd have our meetings in the studio time, and, you know, there was plenty of filming of that.
Q. Did you have conversations with him as well?
A. Yes.
Q. What was Mr. Schaffel's role in this? You were the general manager. What was he?
A. He was the president of Neverland Valley Entertainment.
Q. And did he have a similar agreement to yours in terms of compensation?
A. Yes, he did.
MR. MESEREAU: Objection; no foundation.
THE COURT: Sustained.
Q. BY MR. ZONEN: As the general manager, did you have access to all of the records that dealt with the expenditures?
A. Well, they were in a filing cabinet, and I went through all of them, yes.
Q. You read them all? 8685

A. I read most of them.
Q. As well -- it was the two of you. Did you have conversations with Mr. Schaffel about such matters?
A. Oh, yeah, we talked about things. He was a little bit more braggadocious, but --
MR. MESEREAU: Objection; nonresponsive.
THE COURT: Sustained.
Q. BY MR. ZONEN: Braggadocious?
A. Yeah. He bragged a lot.
Q. What was his compensation, Mr. Schaffel's?
MR. MESEREAU: Objection. Foundation; relevance.
THE COURT: Sustained.
Q. BY MR. ZONEN: Did you review his employment documents as well?
A. I looked at them, yes.
Q. Yeah. And did that contain what his compensation was?
A. Yes.
Q. And what was it?
MR. MESEREAU: Objection; relevance.
THE COURT: Sustained. It's hearsay, really.
Q. BY MR. ZONEN: During the next couple months, you indicated that you did have meetings with Mr. Jackson. Can you tell us with what level of frequency you would meet with him?
A. Well, whenever he came to the studio, but 8686

sometimes he wouldn't come to the studio. So it was whenever he came into the studio.
Q. And how often might that be?
A. Boy, the first couple of months, it was pretty regular. I mean, he came in, you know, three or four times a month.
Q. Did you have meetings with him on a regular basis when he came into the studio?
A. Well, we would talk about the project, how did we think -- when Michael walks in the door, he's -- he's meticulous. He wants to know everything that's going on and what's happening, and he's a great businessmen.
MR. MESEREAU: Objection. Nonresponsive and move to strike.
THE COURT: Sustained.
Q. BY MR. ZONEN: Did you brief Mr. Jackson on a regular basis of what was going on with Neverland Valley Entertainment?
A. We did, yes.
MR. MESEREAU: Objection. Foundation; leading.
THE COURT: Overruled.
You can go ahead and answer.
He did. He said, "Yes."
Q. BY MR. ZONEN: How did you do that? How did you brief him?
A. We would have meetings. Michael would want 8687

1 to know what's going on. "Who do we have coming in?
2 Did you get this person? Is Usher coming?"
3 MR. MESEREAU: Objection. Nonresponsive;
4 move to strike.
5 THE COURT: I'll strike after, "We would have
6 meetings."
7 Q. BY MR. ZONEN: What kind of things would Mr.
8 Jackson want to know in the course of these
9 meetings?
10 A. That we are getting the hottest artists out
11 there right now on this project. We had to be the
12 hottest.
13 Q. And did he ask you details in terms of who
14 you were going after and what you were intending to
15 do, attempting to do?
16 MR. MESEREAU: Objection; leading.
17 THE COURT: Overruled.
18 Q. BY MR. ZONEN: You can answer.
19 A. Oh, he wanted to know that it was the
20 hottest artist, and when are they coming, and what
21 are we doing.
22 Q. All right. In addition to the meetings at
23 the studios that took place, did you also have
24 meetings with him at other locations?
25 A. The -- well, like I said, we had The Beverly
26 Hills Hotel. We had the studio meetings. And then
27 we would have -- we had two meetings at The
28 Universal Hilton. 8688

Q. All right. Did you have telephone conversations with Mr. Jackson?
A. Oh, yeah. He called -- him and Marc would call my house.
Q. On what level or frequency? And we're talking about Mr. Jackson, not Marc Schaffel. But on what level of frequently would you have a conversation with Mr. Jackson about the business?
A. In the beginning, the first couple of months, it was -- I would say it was -- it was semi-regular, once or twice a month. You know, just late-night phone calls, because Michael gets up late, so -- or -- so it would be late-night phone calls sometimes.
Q. You would be home by the evening hours?
A. Yeah, I'd be home.
Q. All right.
A. Exhausted, but home.
Q. And did you ever get calls from Mr. Jackson while you were at the office?
A. Yes, he would call in.
Q. And did you, in fact, have an office there?
A. Yes, at Neverland Valley Entertainment.
Q. And where was Neverland Valley Entertainment?
A. In Calabasas, California.
Q. At somebody's residence?
A. At Marc's residence, yes. 8689

Q. Describe for us his residence, please, in Calabasas.
A. A gated community. Pretty swanky. It's pretty nice. A rich person's home.
Q. And was the office set at a particular location within the house?
A. Upstairs.
Q. All right. Were there multiple offices devoted to this project?
A. Well, you know, there was an office at Neverland, but, you know, that wasn't really used that much. You know, it was you usually worked out of the bungalow and then -- and then -- but that was the primary office, Mr. Schaffel's --
Q. At Mr. Schaffel's residence, were there multiple rooms that were devoted to this project?
A. Yes.
Q. Okay. Did you have separate rooms from Mr. Schaffel?
A. Yes. I did.
Q. Okay. Were you able to hear, from where you worked, conversations that Mr. Schaffel was having on the telephone?
A. Well, Marc had a really bad habit of having you sit there, and he would --
MR. MESEREAU: Objection; nonresponsive.
THE COURT: Overruled.
You may finish that sentence. 8690

THE WITNESS: Marc would have a really bad habit of having you sit there, and he would put people on speakerphone, and -- or answer on speakerphone, so you would know who it was, so he can kind of gloat that, you know, “Oooh, look who I’m talking to,” whether it’s Michael or Beyonce or some other star. And then he would pick up the phone or he would just leave them on speakerphone, and you could hear the whole conversation. Everybody in the house that we were working in, we were always shocked that pretty much a lot of business was known just by sitting there, you know.
Q. BY MR. ZONEN: All right. So did you have to actually be in his room to be able to overhear these conversations?
A. Well, yeah. I mean, pretty much you had to be in his office. But then I could hear them in my office, too, if I jumped on a conference call with them.
Q. Did you frequently overhear conversations that Marc Schaffel was having with other people concerning his business enterprise?
A. Yes.
Q. Did you frequently overhear conversations that Marc Schaffel was having with Michael Jackson?
A. Yes.
MR. MESEREAU: Objection; foundation.
THE COURT: Sustained. 8691

Q. BY MR. ZONEN: Do you know Michael Jackson's voice?
A. Yes.
Q. Is it fairly distinct?
A. Well, unless he's upset. Then he uses the other voice.
Q. Now, you tell us another voice --
MR. MESEREAU: Objection; nonresponsive.
THE WITNESS: Oh.
THE COURT: Sustained.
Q. BY MR. ZONEN: Have you talked with Mr. Jackson often enough or been present during his conversations that you're able to recognize his voice when he calls?
A. Michael Jackson's voice is the most distinctive voice in the world, I think.
MR. MESEREAU: Objection. Nonresponsive; move to strike.
THE COURT: Overruled. Next question.
Q. BY MR. ZONEN: All right. That means yes, you do know his voice?
A. Yes.
Q. And you know his voice well?
A. Based on my experience of hearing him.
Q. On those occasions when he called, did you have any difficulty at all recognizing his voice?
A. No. God, no. He always introduced himself as Michael Jackson. 8692

Q. All right. Were you able to overhear conversations between Marc Schaffel and Michael Jackson?
A. Yes.
Q. Both sides of the conversation? In other words --
A. At times. Not all the time, but at times.
Q. All right. Can you give us a sense of how often you would overhear a conversation? And I'm now talking about both sides of the conversation between Marc Schaffel and Michael Jackson. How often would that happen?
A. Could you be more clear? I'm sorry.
Q. Well, in the first couple months of your employment with Neverland Valley Entertainment --
A. Uh-huh.
Q. -- give us a sense of how often you would overhear a conversation between Marc Schaffel and Michael Jackson.
A. Frequently. Especially if I stayed later, because Michael would always -- always call later. And he would always call him "Arnold." That was his nickname. "Ar-nold." And then -- and then he would pick up the phone and say, "You're looking for french fries?"
MR. MESEREAU: Objection. Nonresponsive; move to strike.
THE COURT: Stricken. 8693

Q. BY MR. ZONEN: All right. We'll get to
Arnold in just a moment.
A. Oh, all right.
Q. Let's talk about -- if we can, let's talk
about -- this happens when we get later in the day.
A. Okay.
Q. The frequency with which you might hear
conversations between Michael Jackson and Marc
Schaffel where you could actually hear both sides of
the conversations, you answered "frequently" to that?
A. Yeah.
Q. Give us a sense, please, of what that means
in a week period of time.
A. Well, if you're speaking about the
beginning, before the Martin Bashir thing, Michael
was calling. He wanted to know what was happening
with the project. He's a meticulous businessman.
MR. MESEREAU: Objection. Nonresponsive;
move to strike.
THE COURT: So the question is kind of hard
to get back to, but you were asking him what the
frequency of calls from Michael Jackson were.
MR. ZONEN: Yes, Your Honor, I was.
THE COURT: That's the question. How often
did he call in a week?
THE WITNESS: In a week? God, sometimes ten
times. Hey, he would be on the phone with him for
hours sometimes at night. And we didn't have a 8694

schedule. You have to remember, work is work. You get up, you work. And when Michael calls and you got something to do, you work.
MR. MESEREAU: Objection; nonresponsive.
THE WITNESS: So it's like that's the way it was.
Q. BY MR. ZONEN: Give us a sense of when you were there at this office in Calabasas, what kinds of hours and days did you put in?
A. Seven days a week. If you had to do something, you had to do it.
Q. Now, you were working pretty much full time on this project?
A. Yes. This was our only project in the beginning.
Q. The point that was offered to you, that 1 percentage of -- at the time as was described as gross, did that give you some incentive to work even harder on making this --
A. Well, God, yeah.
MR. MESEREAU: Objection. Leading and relevance.
THE COURT: Sustained.
Q. BY MR. ZONEN: What is the consequence of having a commission like that?
A. You'd be rich.
MR. MESEREAU: Objection; relevance.
MR. ZONEN: Would you like me to move on, 8695

Judge?
THE COURT: Yes.
MR. ZONEN: And I will.
Q. All right. During the course of the conversations that you had with Mr. Jackson, and of course the conversations you had overheard with Mr. Schaffel, as frequently as they were, describe how attentive to business Mr. Jackson was.
A. He wanted to know the details.
MR. MESEREAU: Objection; no foundation.
THE COURT: Overruled.
Q. BY MR. ZONEN: Go ahead.
A. He wanted to know the details. He wanted to know what was happening with the project. You know, the project was -- you know, it was taking time to get the artists in, so he wanted to know we were getting the hottest artists and the best artists, and where were we going to be going next, and -- and things like that. I mean, it was pretty much our duty to make sure everything was set up.
MR. MESEREAU: Objection; nonresponsive.
THE COURT: The last sentence is stricken.
Q. BY MR. ZONEN: Do you know who was financing this project?
A. Michael was.
Q. Do you know how it was being financed?
A. Yes.
Q. How? 8696

A. Through a money lender named Parviz in Beverly Hills.
Q. Was that a loan that was obtained by Michael Jackson?
MR. MESEREAU: Objection; leading.
THE COURT: Overruled.
Q. BY MR. ZONEN: Go ahead.
A. Yes, it was a loan that Marc and Michael got from Parviz for ten million dollars.
Q. Were you there?
A. I was there when the paperwork was signed. We brought the paperwork to Parviz after Michael had signed it in Beverly Hills, in the 9000 -- I believe the 9000 block of Beverly Hills, Wilshire, and Parviz ran it upstairs, and we came back the next day, and it was signed.
Q. Okay. Now --
A. And I saw the document.
Q. Was the ten million dollars actually turned over to either Marc Schaffel or Michael Jackson?
A. No, it was -- it was, like, in the bank, and they withdrew, I think it was like two million dollars, two and a quarter initially to start the company, start the project going.
Q. All right. And which bank, incidentally, was that deposited into?
A. It was -- it was Marc's bank, and that would have been B of A. No, not B of A. It was, uh, U -- 8697

God, I can't remember the name of it. I can see the
logo, but I can't remember the name of it. But --
Q. Were you about to say --
A. But it was the one off of Santa Monica. I
remember because we went there many times, because
Beverly was the lead person that we dealt with.
Q. All right. So you were there in Santa
Monica, the City of Santa Monica?
A. Uh-huh.
Q. Beverly was the person --
A. Yes.
Q. -- you dealt with?
A. Her name was Beverly.
Q. And you've seen her?
A. Oh, yeah, I've talked to her many times.
She made me open an account. I didn't have a
million dollars to put in it, but --
Q. Did you get a toaster?
A. I didn't get anything. So -- but I opened
an account with her.
THE COURT: You want to quit, don't you?
MR. ZONEN: I really do.
THE COURT: All right.
See you tomorrow at 8:30. Remember the
admonitions.
MR. ZONEN: Thank you.
(The proceedings adjourned at 2:30 p.m.)
--o0o-- 8698

REPORTER'S CERTIFICATE

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

I, MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304, Official Court Reporter, do hereby certify: That the foregoing pages 8533 through 8698 contain a true and correct transcript of the proceedings had in the within and above-entitled matter as by me taken down in shorthand writing at said proceedings on May 3, 2005, and thereafter reduced to typewriting by computer-aided transcription under my direction.

DATED: Santa Maria, California,
May 3, 2005.

MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304
OFFICIAL COURT REPORTER